17165
116

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]. [redacted]3

No. [redacted]. 481

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND CORNPLANTER REFINING COMPANY, APPELLANTS,

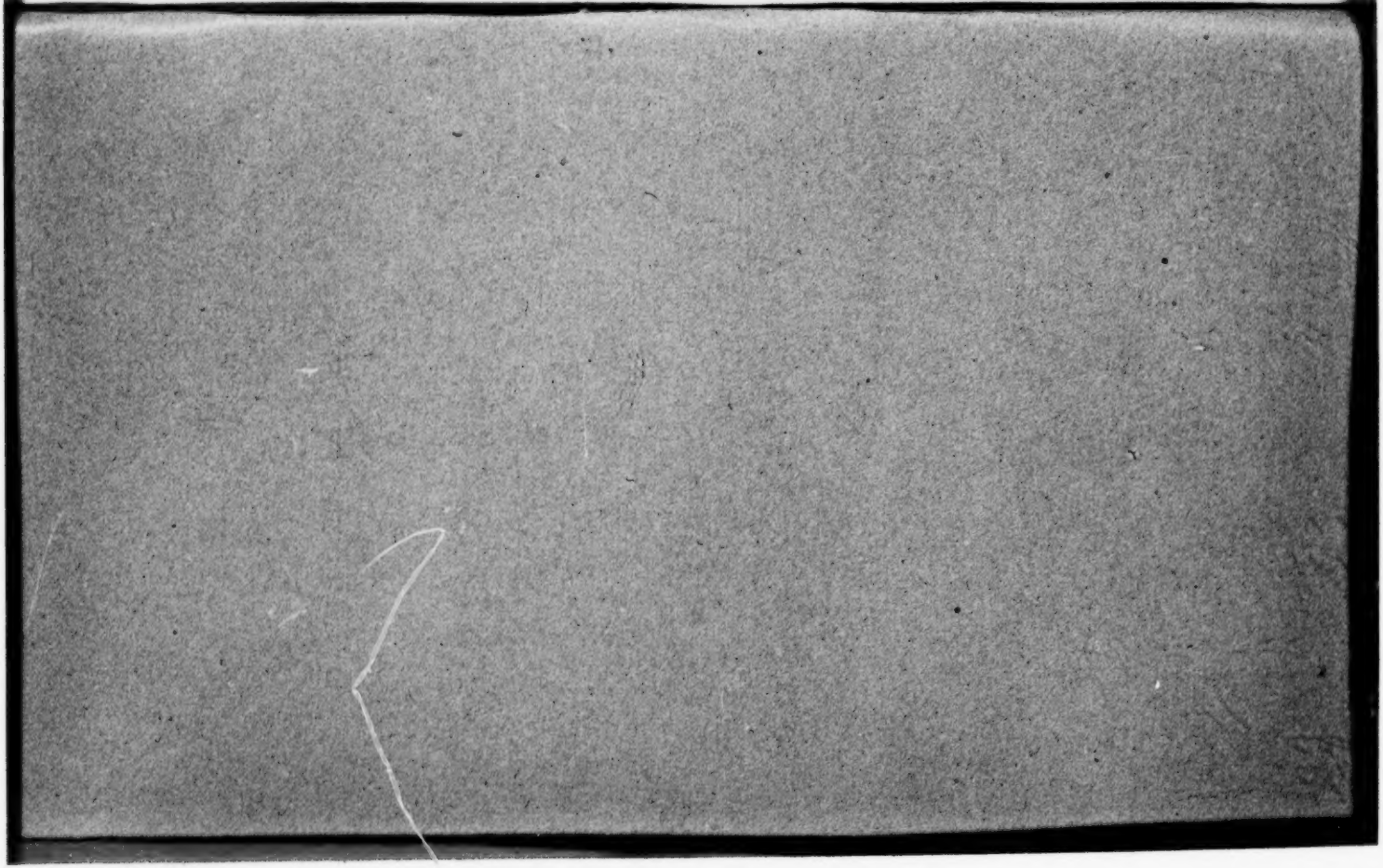
vs.

THE OHIO OIL COMPANY.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED MARCH 15, 1913.

(23587)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1012.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND CORNPLANTER REFINING COMPANY, APPELLANTS,

vs.

THE OHIO OIL COMPANY.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

INDEX.

	Original.	Print.
Caption	a	1
Petition	1	1
Exhibit A.—Order of the Interstate Commerce Commission, June 8, 1911	10	7
Exhibit B.—Order of the Interstate Commerce Commission, June 3, 1912	14	8
Order extending time to answer	15	9
Appearance for the Interstate Commerce Commission	15½	9
Answer of the United States	16	11
Answer of the Interstate Commission	42	37
Exhibit A.—Opinion of the Interstate Commerce Commission	58	45
Exhibit B.—Order of the Interstate Commerce Commission, June 3, 1912	70	57
Exhibit C.—Map	71	59
Notice of motion for injunction	73	61
Affidavit of James C. Donnell	75	62
Affidavit of F. Eugene Hurley	89	71
Exhibit 1.—Articles of incorporation of the Ohio Oil Co.	92	72
Affidavit of Ernest E. Colling	94	73
Affidavit of Burr A. Towl	95	73
Affidavit of Forrest M. Towl	97	75
Affidavit of Ward A. Miller	100	76

	Original.	Print.
Journal entries	104	78
Proceedings October 29, 1912	104	79
Proceedings October 30, 1912	105	79
Proceedings October 31, 1912	105	79
Separate petition of intervention by the Cornplanter Refining Co	107	80
Motion of the Cornplanter Refining Co. for leave to intervene	119	85
Order of intervention, November 5, 1912	120	86
Answer of the petitioner to petition of intervention	121	87
Opinion	124	89
Dissenting opinion by Mack, J	172	137
Order granting preliminary injunction	182	147
Petition for appeal	184	148
Assignment of errors	185	148
Order allowing appeal	189	151
Clerk's certificate	190	151
Citation and service	191	152
Stipulation as to printing record	194	153
Stipulation and addition to record	196	153
Order for completion of record	197	154
Pipe Line Tariff	198	155

a In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, CORNPLANTER REFINING COMPANY, INTERVENERS. } No. 78.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition. (Filed July 29, 1912.)

1 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
against
UNITED STATES OF AMERICA, RESPONDENT. } In Equity. No. 78.

Petition.

To the honorable the Judges of the United States Commerce Court:

The Ohio Oil Company exhibits this its petition against the United States of America, and thereupon says as follows:

I.

The petitioner is and at at all the times hereinafter mentioned was a private business corporation, organized and existing under the laws of the State of Ohio, with its principal office at Findlay, in said State. Petitioner was incorporated in the year 1887, and the purposes for which it was organized and the business in which it was authorized to engage were stated in section "third" of its original articles of incorporation, which read as follows:

"Third. Said corporation is formed for the purpose of drilling for and producing petroleum or mineral oil and piping or
2 otherwise transporting and storing the same where produced or owned by it, and for the purpose of refining and manufacturing such oil and its varied products, and shipping, selling, and marketing the same, and buying and selling such oil and its products, together with the right to acquire, by purchase, lease, or otherwise, oil lands and all other property necessary for the carrying out of the objects of its incorporation."

That these articles of incorporation were thereafter and in December, 1890, amended, but no material change was made therein except in section "third" thereof, which, as amended, reads as follows:

"Third. The said corporation is formed for the purpose of boring, drilling, mining, and operating for the production of oil and gas; of producing, buying, selling, marketing, and disposing of oil and gas and their various products; of piping or otherwise transporting and of storing oil and gas when produced, owned, or acquired by it; of refining and manufacturing oil and its various products; and of purchasing, leasing, acquiring, holding, and disposing of such real and personal estate as may be necessary and convenient for the carrying on of its said business."

II.

Ever since its incorporation your petitioner has been and is now engaged in the business of producing and purchasing crude oil in the States of Ohio, Indiana, and Illinois and of selling the same when produced or acquired and owned by it; and as a plant facility for its business your petitioner has constructed, owns, and uses its own private pipe lines passing through those States. It also leases and uses a private pipe line running from Negley, Ohio, to Centerbridge, Pennsylvania, which leased line, from the time it was so leased by petitioner, has always been and is now used by your petitioner solely for the transportation of its own crude oil.

3 The transportation of crude oil by petitioner, when either produced or purchased and owned by it, through its said pipe lines, whether owned or leased by it, is and always has been merely incidental to its business above described, its pipe lines being used merely as a facility for the transportation of its own oil in the conduct of its business. And your petitioner further avers (alleging on personal knowledge as to the petitioner itself and the pipe lines owned by it and on information and belief as to its leased line and the owner of the same) that no portion of petitioner's pipe lines, whether owned or leased by it, has ever been offered or used by it or by anyone for the carriage or transportation of oil or other commodity for hire; that neither petitioner nor the owner of said leased line has at any time or in any way whatsoever held itself out to the public as a common carrier; that neither the petitioner nor the owner of said leased line has ever made or had any contract, agreement, or understanding whereby any other person, firm, or corporation has or had any right or interest in any of petitioner's owned or leased pipe lines or in the use or operation thereof; that neither petitioner nor the owner of said leased line has ever established, charged, collected, or received from itself or any other person, firm, or corporation any tariff, rates, or charges of any description for or in respect of the transportation of oil or other commodity through any of the pipe lines so owned or leased by petitioner or any part thereof; that, on the contrary, your petitioner has always since its organization used its pipe lines, whether owned or leased, solely and exclusively to carry and transport its own oil; and that the pipe line leased by your petitioner was never used by anyone prior to its being so leased to it.

III.

Your petitioner further avers that it has acquired, solely by private purchase, all the rights of way on which its pipe lines are laid, and has obtained no rights of way by condemnation proceedings; 4 that it has no right of eminent domain and has never attempted nor assumed to exercise such right; and your petitioner is informed and believes, and therefore avers, that its leased pipe line hereinbefore referred to was also built on private rights of way which its owner acquired solely by private purchase and without possessing or exercising the right of eminent domain.

IV.

Your petitioner further avers that heretofore the Interstate Commerce Commission, which will hereinafter be designated "the commission," upon its own motion, instituted a proceeding entitled "In the Matter of Pipe Lines, No. 4199," in which proceeding this petitioner and various other corporations and partnerships were made respondents; and thereupon, and on the 8th day of June, 1911, the commission made a certain order, a copy of which is hereto annexed, marked Exhibit A, and prayed to be read as a part hereof. That said order was served upon petitioner and subsequently certain hearings were had in said proceeding and certain testimony taken therein by the commission. Throughout said hearings your petitioner insisted and objected that it was not subject to the "act to regulate commerce," or the acts amendatory thereof or supplementary thereto, and that the commission had no jurisdiction over it or its said pipe lines owned or leased by it. Nevertheless and notwithstanding said objections of your petitioner, and although all of the facts herein alleged were made to appear and were established before the commission, thereafter and on the 3rd day of June, 1912, the commission made and entered a further order in said proceeding, a copy of which is hereto annexed, marked Exhibit B, and prayed to be read as a part hereof, and caused the same to be served upon your petitioner. That by the terms of said order of the 3rd day of June, 1912, your petitioner is notified and required to file with the commission, on or before 5 the 1st day of September, 1912, schedules of its rates and charges for the transportation of oil, in compliance with the provisions of the "act to regulate commerce," and the commission thereby assumes jurisdiction over your petitioner and its said pipe lines owned or leased by it as subject to the provisions of the "act to regulate commerce" and the acts amendatory thereof and supplemental thereto. The said order will therefore become effective on the 1st day of September, 1912, unless it be set aside or its enforcement enjoined or otherwise suspended before that day.

V.

Your petitioner avers that said order of June 3rd, 1912, Exhibit B, is, as against it, unlawful and unconstitutional inasmuch as the commission has no jurisdiction over your petitioner or its said pipe lines leased or owned by it, and that therefore the order of June 3rd, 1912, should not as to it be enforced or allowed to become operative.

VI.

Your petitioner further avers, because of the facts herein set forth, that the said order of June 3rd, 1912, Exhibit B, is unlawful and unconstitutional as to it, and should not as to it be enforced or allowed to become operative:

"(*a*) Because section 1 of the act to regulate commerce is not applicable to your petitioner or to the pipe lines owned or leased by it;

"(*b*) Because, if section 1 of the act to regulate commerce is to be construed as applying to your petitioner or to the pipe lines owned or leased by it, then, to that extent, the act is unconstitutional and violates the fifth amendment of the United States Constitution, in that it deprives your petitioner of property without due process of law and takes your petitioner's private property for public use without just compensation;

6 "(*c*) Because, by the provisions of its charter, as above set forth, your petitioner has always been and is limited (in respect to the transportation of oil) to the carriage and transportation of oil owned by itself, and because therefore the carriage or transportation of oil by petitioner for others would be ultra vires."

In connection with the averments in this section of the petition contained, petitioner calls the attention of the court to the fact that the commission in its report accompanying said order of June 3rd, 1912, filed in the above mentioned proceeding, entitled "In the Matter of Pipe Lines, No. 4199, says:

"We shall not consider the constitutional question here involved. If there was doubt in our minds as to the purpose of Congress, it would be proper to resolve that doubt on the side of constitutional safety, but it seems quite manifest to us, from the history of this amendment to the act and from its language, that Congress intended to convert the interstate oil pipe lines of the country into common carriers. Whether Congress could lawfully so act is a matter for the courts judicially to decide. The Interstate Commerce Commission is an administrative body, which may not presume to annul by interpretation an act of the Federal Legislature. So far as we are informed, the Supreme Court of the United States has never been called upon to pass upon a question of this character, and while it may be conceded that Congress could not impose upon a private pipe line the duties and responsibility of a common carrier, it is not clear but that the provisions of this act could be upheld upon the

ground that Congress was establishing a condition to which any pipe line company must conform, which transported oil across a State border."

7 VII.

Your petitioner avers that its said pipe lines are solely adapted for, and their present capacity is only sufficient for, its own private business; that any oil carried for others in petitioner's lines would displace a like amount now carried for petitioner itself and required by petitioner for the fulfillment of contracts and otherwise in the course of its business; that the enforcement of the said order of June 3rd, 1912, Exhibit B, would therefore necessitate a substantial readjustment and rearrangement of its business, pending which petitioner would be unjustly subjected to embarrassment and serious loss; that compliance with said order compelling it to receive, carry, and transport through its pipe lines oil for the public would cause further great loss to petitioner because the transportation through its pipes of oils of varying grades and gravities would produce a large amount of contamination, with a resulting substantial depreciation in the quality and value of the oil belonging to your petitioner and carried through your petitioner's lines, which would cause your petitioner great damage.

VIII.

Your petitioner therefore avers that the said order of the commission, made and entered the 3rd day of June, 1912, Exhibit B, should as to your petitioner be wholly set aside and annulled, and that, pending a final determination herein, said order should as to your petitioner be suspended and its enforcement and execution enjoined. Unless the order be thus suspended and enjoined, your petitioner will be compelled to file and publish tariffs, thus holding itself out to the public as a common carrier; will be compelled to readjust its business;

8 to multiply its pipe lines in order to furnish increased capacity; to reconstruct its plant at its various delivery stations; to provide additional tanks at its pumping stations and terminals, so as to reduce the loss by contamination; and to increase the number of its employees; all of which will involve a large outlay of money, which would be wasted if the order should finally be held to be unlawful. That, on the other hand, if said order be not obeyed by petitioner, many suits for damages are liable to be brought against your petitioner by shippers desiring to ship oil through petitioner's lines, whereby your petitioner would be subjected to a multiplicity of suits, and to great expense, loss, and damage. That your petitioner will therefore suffer irreparable injury should it not be protected from present compliance with said order of June 3rd, 1912, in the event that that order be finally set aside and annulled.

In view of the premises, your petitioner prays that as to it the said order made and entered by the Interstate Commerce Commission on

the 3rd day of June, 1912, Exhibit B, may be set aside and annulled; that its enforcement and execution as to your petitioner may be enjoined during the pendency of this suit and until final decree herein; that an interlocutory injunction may be awarded; that if any delay intervenes between the filing of this petition and the issuance of a temporary or interlocutory order, as prayed for herein, an order be entered suspending the said order of the commission and enjoining the enforcement thereof as to your petitioner until the hearing and final determination of the application for the temporary or interlocutory order prayed for herein; and that your petitioner may have such other and further relief as may be proper.

And, to this end, your petitioner prays that the United States of America may be made a party defendant hereto, and that a subpœna may be granted, commanding it to appear herein and answer the allegations of this petition, but not under oath (an answer under oath being hereby expressly waived), and to stand and abide such orders and decrees as may be herein made.

9 And, as in duty bound, petitioner will ever pray, &c.

THE OHIO OIL COMPANY,
By JAMES C. DONNELL, *President.*

CARTER, LEDYARD & MILBURN,
Solicitors for Petitioner, 54 Wall Street, New York, N. Y.
JOHN G. MILBURN,
FRANK L. CRAWFORD, *Of Counsel.*

UNITED STATES OF AMERICA,
Northern District of Ohio, State of Ohio, County of Hancock, ss:

Personally appeared before me, T. Glen Carpenter, a notary public in and for the aforesaid county, James C. Donnell, who, being first duly sworn, deposes and says:

That he is the president of The Ohio Oil Company, the petitioner in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; and that the matters therein stated are true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that, as to those matters, he believes it to be true.

JAMES C. DONNELL.

Subscribed and sworn to before me this twenty-sixth day of July, in the year 1912.

In witness whereof, I have hereunto signed my name and affixed my notarial seal this twenty-sixth day of July, 1912.

[SEAL.] T. GLEN CARPENTER,
Notary Public.

My commission expires Jan. 9, 1915.

10 *Exhibit A.*

Interstate Commerce Commission.

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of June, A. D. 1911.

Present: Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, commissioners.

No. 4199.

In the Matter of Pipe Lines.

Complaint being made to this commission that the carriers hereinafter named, and each of them, have established certain rates, classifications, and regulations which are unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of the act to regulate commerce and acts amendatory thereof, and that the practices of said carriers, and of each of them, in the conduct of business subject to said act are unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of said act, and good cause appearing therefor,

It is ordered, That an inquiry be, and the same is hereby, instituted into the above-mentioned matters by this commission on its own motion and that the rates, classifications, regulations, and prac-
11 tices of the various corporations and persons engaged in the transportation of oil and other commodities, except water, and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe line and partly by water, subject to the act to regulate commerce and the acts amendatory thereof, and of each of them, to determine whether such rates, classifications, regulations, or practices, or any of them, are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation of any of the provisions of the said act, and to determine the manner and method in which the business of said corporations and persons and each of them is conducted.

It is further ordered, That the following corporations and persons engaged in such transportation subject to said act to regulate commerce and acts amendatory thereof be, and each of them is hereby, made parties respondent to this proceeding, viz: The Buckeye Pipe Line Company, The Columbia Pipe Line Company, The Crescent Pipe Line Company, Cumberland Pipe Line Company (Incorpor-

ated), Emery Pipe Line, The Eureka Pipe Line Company, Gulf Pipe Line Company, Gulf Pipe Line Company of Oklahoma, Higgins Oil & Fuel Company, Indiana Pipe Line Company, National Transit Company, New York Transit Company, Northern Pipe Line Company, Producers & Refiners Oil Company (Limited), Producers Oil Company (Limited), Pure Oil Company, South West Pennsyl-
12 vania Pipe Lines, Southern Pipe Line Company, The Texas Company, United States Pipe Line Company, Acme Oil Company, Anchor Oil & Gas Company, Associated Oil Company, Associated Pipe Line Company, Central Oil Company of Los Angeles, Cornplanter Refining Company, Corsicana Refining Company, Dougherty & Son Refining Company, W. H., Evangeline Oil Company, Franklin Pipe Line Company, Guffey Petroleum Company, J. M., Gulf Refining Company of Louisiana, Industrial Pipe Line Company, Kansas Cooperative Refining Company, Kansas Crude Oil & Gas Company, Kansas Natural Gas, Oil & Pipe Line Improvement Company, Kasigan Oil, Gas & Power Company, Manhattan Oil Company, The Modelo Oil Company, National Pipe Line Company, National Refining Company, The Ohio Oil Company, Paragon Refining Company, Prairie Oil & Gas Company, Puente Oil Company, Pure Oil Company, Rio Bravo Oil Company, Security Oil Company, Standard Oil Company of California, Standard Oil Company of Kansas, Standard Oil Company of Louisiana, Sun Company,
13 Sun Pipe Line Company, Tidewater Oil & Pipe Company, Tidewater Pipe Company (Limited), Uncle Sam Oil Company, Uncle Sam Oil Company of Kansas, Union Oil Company of California, The Union Petroleum Company of Philadelphia, Union Pipe Line Company, Vacuum Oil Company, Wellsville Refining Company.

A true copy.

[SEAL.] JUDSON C. CLEMENTS,
Chairman.

14 *Exhibit B.*

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3d day of June, A. D. 1912.

No. 4199.

In the Matter of Pipe Lines.

This proceeding having been instituted by the commission on its own motion, and investigation having been had, and the commission having, on the date hereof, made and filed a report containing its

findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That respondents, The Oklahoma Pipe Line Company, The Prairie Oil & Gas Company, Standard Oil Company of Louisiana, The Ohio Oil Company, Standard Oil Company of New Jersey, The Tidewater Pipe Company (Limited), Producers & Refiners Oil Company (Limited), United States Pipe Line Company, Pure Oil Company, Pure Oil Pipe Line Company, The National Pipe Line Company, The Uncle Sam Oil Company, and The Uncle Sam Oil Company of Kansas, be, and they are hereby, notified and required to file with this commission, on or before the 1st day of September, 1912, schedules of their rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce.

By the commission.

[SEAL.] JOHN H. MARBLE,
Secretary.

15 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT. } No. 78.

Order extending time to answer. Entered July 31, 1912.

Upon application duly made in that behalf, and good cause being shown, it is ordered that the time within which the United States of America, respondent, and Interstate Commerce Commission, intervening respondent, may answer the petition filed in the above-entitled cause be, and the same is hereby, extended to and including September 16, 1912.

MARTIN A. KNAPP,
Presiding Judge.

15½ In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT. } In Equity. No. 78.

Appearance. Filed August 2, 1912.

To Mr. G. F. Synder, clerk of said court:

I hereby enter herein the appearance of the Interstate Commerce Commission as intervening respondent, and of myself as its solicitor.

Dated July 30, 1912.

CHAS. W. NEEDHAM, *Assistant Solicitor.*

In The United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
v.
UNITED STATES OF AMERICA, RESPONDENT. } No. 78.

ANSWER OF THE UNITED STATES.

Comes now the United States of America by its counsel, and for answer to the petition filed herein says:

I. Answering Paragraph I of the petition, this respondent denies that at all times mentioned in the petition the petitioner was a private business corporation, but respondent admits that petitioner was organized and existing under the laws of the State of Ohio, with its principal office at Findlay, in said State. Respondent has no knowledge that petitioner was incorporated in the year 1887, and it neither admits nor denies the same, and if the same becomes material upon the hearing, it will require strict proof thereof. Respondent has no knowledge that the purposes for which the petitioner was organized, and in which it was authorized to engage, are fully stated in section 3 of its articles of incorporation, and the amendment to said section 3 of said articles of incorporation as alleged, and it neither

admits nor denies the same, and if the same becomes material upon the hearing it will require strict proof thereof.

Respondent further alleges that upon the incorporation of the said petitioner, and at all times since its said incorporation, the petitioner has been, and now is, a corporation organized for the purpose of transporting crude petroleum by means of pipe lines and for storing crude petroleum, and as such it is authorized and empowered, under the laws of the State of Ohio, to enter upon any private land for the purpose of examining or surveying a line or lines for its pipe lines, and may appropriate so much thereof as is deemed necessary for the laying down or building of such pipe lines, and for the erection of tanks or reservoirs for storage and transportation, and for the erection of such stations and buildings as may be necessary for the purpose aforesaid; and that such appropriation shall be made in accordance with the law providing for compensation to the owners of private property appropriated for the use of corporations; and, so far as the rights of the public therein are concerned, the county commissioners as to county and State roads, the township trustees as to township roads, and the councils of municipal corporations as to streets and alleys in their respective jurisdiction, subject to such regulation and restrictions as they may prescribe, may grant to such corporation the right to lay such pipe lines therein; such a corporation, under the laws of the State of Ohio, for the

purpose of transporting oils, is declared to be a common carrier, and subject to all the duties and liabilities of common carriers under the laws of that State. Respondent alleges that the petitioner herein is a common carrier of oil for the public under the laws of the State of Ohio and is not a private business corporation. Respondent alleges that in pursuance of the power conferred upon the petitioner by its charter, and the power conferred upon the petitioner under and by virtue of the laws of the State of Ohio, the petitioner has exercised, and is continuing to exercise, its right to appropriate private property for public use and to use, under the restrictions and limitations imposed by the public officers, the county and State roads, and the streets and alleys of the municipalities of the State of Ohio in the construction and maintenance of its pipe lines, reservoirs, tanks, and stations.

II. Answering Paragraph II of the petition, this respondent admits that the petitioner has been, and is now, engaged in the business of producing and purchasing crude oil in the States of Ohio, Indiana, and Illinois, and of selling the same when produced or acquired and owned by it. Respondent further admits that the petitioner has constructed, owns, uses, and operates a pipe line passing through those States. Respondent denies that the said pipe line is a plant facility or that it is a private pipe line of the petitioner. Respondent alleges that the manner in which the said pipe line and the other facilities and equipment mentioned of the petitioner were acquired

and constructed, and the purposes and objects for which they are being used, are such as to put it beyond the power of the petitioner to use, or to continue to use, the pipe line of the petitioner for the conduct of the petitioner's own private business to the exclusion of others. Respondent alleges that if the same are now being used exclusively for the petitioner's own private business, and as a plant facility, it is not because of the right of the petitioner so to use the same, but of its failure to use the same otherwise in compliance with the law. Respondent admits that the petitioner also leases and uses a trunk pipe line running from Negley, Ohio, to Centerbridge, Pa. Respondent denies that the said pipe line is a private pipe line and denies that the said pipe line is used by petitioner solely for the transportation of its own crude oil. Respondent alleges that in addition to using the said pipe line for the transportation of its own crude oil, the petitioner is also using the same to accomplish illegal and unlawful purposes in placing unreasonable restrictions and limitations upon interstate commerce. Respondent alleges that the purposes and objects for which the said last-mentioned pipe line is being used are such as to put it beyond the power of the petitioner to use, or to continue to use, the pipe line for the petitioner's own private business to the exclusion of others. Respondent alleges that if the same are now being used exclusively for the petitioner's own private business, it is not because of the right of the petitioner so to use the same, but of its failure to use the same other-

wise and in compliance with the law. Respondent is informed and believes, and upon such information and belief it charges, that any such alleged use of the said pipe line has been undertaken and is sought to be maintained for the purpose of evading and in violation of the statutes relating to pipe lines. Respondent denies that the transportation of crude oil by petitioner, when produced or purchased and owned by it, through its said pipe lines, whether owned or leased by it, is, and always has been, merely incidental to its business of producing and purchasing crude oil; and denies that its pipe lines are being used merely as a facility for the transportation of its own oil in the conduct of its business. Respondent alleges that the principal business of the petitioner is the transportation of oil by means of pipe lines, and that the petitioner is neither a consumer nor refiner of crude oil, and in so far as the petitioner represents itself as dealing in and handling oil as its principal business separate from the transportation thereof, it is a device, scheme, or arrangement in and by which the petitioner seeks to carry on the business of a common carrier engaged in interstate commerce and avoid the statutes relating to common carriers by pipe line. Respondent has no knowledge that any portion of petitioner's line, whether owned or leased by it, has ever been offered or used by it, or by any one, for the carriage or transportation of oil or other commodity for hire, and that neither petitioner nor the owner of said leased line has at any time or in any way whatso-

ever held itself out to the public as a common carrier, and it neither admits nor denies the same; and if the same becomes material upon the hearing it will require strict proof thereof. Respondent alleges that in failing to hold itself out to the public as a common carrier of oil, the petitioner was and is acting illegally and unlawfully. Respondent has no knowledge that neither the petitioner nor the owner of said leased line has ever made or had any contract, agreement, or understanding whereby any other person, firm, or corporation has or had any right or interest in any of petitioner's owned or leased pipe line, or in the use or operation thereof, and it neither admits nor denies the same; and if the same becomes material upon the hearing it will require strict proof thereof. Respondent has no knowledge that neither petitioner nor the owner of said leased line has ever established, charged, collected, or received from itself or from any other person, firm, or corporation any tariff, rates, or charges of any description for or in respect of the transportation of oil or other commodity through any of the pipe lines so owned or leased by petitioner or any part thereof, and it neither admits nor denies the same; and if the same becomes material upon the hearing, it will require strict proof thereof. Respondent alleges that in failing to establish, charge, collect, or receive rates and charges for the transportation of oil through the pipe lines so owned and controlled by it, the petitioner has been, and is now, acting illegally and unlawfully, and in violation of the

statutes of the State of Ohio and of the act of Congress in such cases made and provided. Respondent denies that since its organization the petitioner has used its pipe lines, whether owned or leased, solely and exclusively to carry and transport its own oil, and alleges that in so far as the petitioner is the owner of the oil it is a mere device, scheme, or arrangement for the purpose of transporting oil by means of pipe lines, and at the same time thwarting the statutes of the State of Ohio and the act to regulate commerce and evading the provisions thereof. Respondent has no knowledge that the pipe line leased by the petitioner was never used by anyone prior to its being leased to it, and it neither admits nor denies the same, and if the same becomes material upon the hearing it will require strict proof thereof.

III. Answering Paragraph III of the petition, this respondent denies that the petitioner has acquired solely by private purchase all the rights of way upon which its pipe lines are laid, and denies that it has no right of eminent domain, and denies that its leased pipe line was also built on private rights of way which its owner acquired solely by private purchase, and denies that its owner was not possessed of the right of eminent domain. Respondent has no knowledge that the petitioner has not obtained any rights of way by condemnation proceedings, and that it has never attempted nor assumed to exercise the right of eminent domain, and has no knowledge that the owner of its leased line never exercised the right of

eminent domain in acquiring its said pipe line, and it neither admits nor denies the same, and if the same becomes material upon the hearing it will require strict proof thereof.

IV. Answering Paragraph IV of the petition, this respondent denies that all the facts in the petition alleged were made to appear, and were established before the Interstate Commerce Commission at the hearing before it, referred to. Respondent admits that throughout the hearings before the commission the petitioner insisted and objected that it was not subject to the "Act to regulate commerce" or the acts amendatory thereof or supplementary thereto. Respondent admits the remaining allegations of Paragraph IV of the petition, and each and every part of the same. Since the filing of the said petition the effective date of the order of the Interstate Commerce Commission sought to be enjoined or suspended has been postponed from September 1, 1912, to November 1, 1912.

Respondent alleges that in the proceeding entitled "In the Matter of Pipe Lines No. 4199," the commission made and entered its report in the premises after a full hearing, the contents of which are fully known to the petitioner. Respondent will file a copy of the said report upon the hearing, and prays that the same be read and considered as a part hereof.

Respondent alleges that at the hearing in the proceeding entitled "In the Matter of Pipe Lines No. 4199," at which the petitioner herein was represented by its present counsel, it was stipulated and agreed by

petitioner through its present counsel that the Interstate Commerce Commission, in the inquiry then being conducted in the said proceeding, might examine into and review those parts of the record and proceedings relating to pipe lines, had and taken in a certain cause in equity entitled *United States of America* v. *Standard Oil Company of New Jersey et al.*, to which the petitioner was a party, commenced in the Circuit Court of the United States, Eastern District of Missouri, Eastern Division, the same being number 5371 on the docket of said court. The opinion and judgment of the said Circuit Court is reported in 173 Federal Reporter, page 177, and the opinion and judgment of the Supreme Court of the United States on the appeal of the Standard Oil Company of New Jersey et al. from the said judgment of the Circuit Court is reported in the Supreme Court as *The Standard Oil Company of New Jersey et al.* v. *The United States*, 221 United States Reports, page 1. Said parts of the record and proceedings relating to pipe lines and the said opinions and judgments in said cause were thus before the Interstate Commerce Commission at the time it entered its said order sought to be set aside and annulled, and the said commission did inform itself of the same or such parts thereof as it deemed pertinent in the premises.

V. Answering Paragraph V of the petition, this respondent denies the same, and each and every part of the same.

VI. Answering Paragraph VI of the petition, this respondent admits that the excerpt purporting to be a part of the report of the Interstate Commerce Commission aforesaid is a true copy of the language used by the commission; but as to any conclusions of law sought to be drawn by the petitioner from the said language as not sustaining the order of the Interstate Commerce Commission, this respondent denies the same and each and every part of the same. Respondent denies the remaining allegations of Paragraph VI of the petition and each and every part of the same.

VII. Answering Paragraph VII of the petition, this respondent denies that the said pipe lines of the petitioner are solely adapted for and their present capacity is only sufficient for its own private business, and alleges that the petitioner is without power to conduct or carry on any private business of its own by means of said pipe lines, and that the business conducted by the petitioner other than a common carrier of oil by means of pipe lines is a mere device, scheme, or arrangement by means of which the petitioner seeks to carry on the business of a common carrier of oil by means of pipe lines in interstate commerce, and at the same time thwart the statutes of the State of Ohio and the act to regulate commerce and to evade the provisions thereof. Respondent denies that any oil carried for others in petitioner's lines would displace a like amount now carried for petitioner itself and required by petitioner for the fulfillment of contracts and otherwise in the course of its business, and alleges that in operating the said pipe lines to their

full capacity with oil which petitioner owns or controls is a mere device, scheme, or arrangement in and by which the petitioner seeks to exclude the oil of others who are entitled to have the same transported, and to thwart the laws of the State of Ohio and the act to regulate commerce and evade the provisions thereof; and any contracts made and entered into by the petitioner by which it is enabled thus to keep the said pipe lines operating at their full capacity are in furtherance of the said illegal and unlawful purposes. Respondent denies that the enforcement of said order would necessitate a substantial readjustment and rearrangement of petitioner's business, pending which petitioner would be unjustly subjected to embarrassment and serious loss, and alleges that while the petitioner would be put to some outlays and expenditures in arranging to receive, store, transport, and deliver the oil as a common carrier in pursuance of the laws of the State of Ohio and the act to regulate commerce, that such outlays and expenditures would be slight as compared with the outlays and expenditures which the petitioner has incurred, is now incurring, and will continue to incur for the purpose of thwarting the laws of the State of Ohio and the act to regulate commerce, and evading the provisions thereof. Respondent denies that compliance with said order would cause further great loss to petitioner because the transportation through its pipe lines of oil of varying grades and

gravities would produce a large amount of contamination, with a resulting substantial depreciation in the quality and value of the oil now carried through petitioner's lines, and alleges that the petitioner is now receiving, storing, transporting, and delivering all of the varying grades and gravities of oil in the said pipe lines which it would be necessary for it to receive, store, transport, and deliver for the producers and shippers of oil who are excluded from the use of the said pipe lines, and who are entitled to the use of the same, and that in operating the said pipe lines in accordance with the laws of the State of Ohio and the act to regulate commerce, and discharging its duties and obligations as a common carrier, it would not be obliged to transport the oil of other producers and shippers in any manner other or different than it is now transporting such oil.

VIII. Answering Paragraph VIII of the petition, this respondent denies that the said order of the commission made and entered June 3, 1912, should, as to petitioner, be wholly set aside and annulled, and that, pending the final determination, said order should, as to petitioner, be suspended and its enforcement and execution enjoined. Respondent admits that unless the order be suspended and enjoined, petitioner will be compelled on or before November 1, 1912, to file and publish tariffs and hold itself out to the public as a common carrier; but respondent denies that the petitioner will be compelled substantially to readjust its business, and denies that petitioner will be compelled to multiply its pipe

lines in order to furnish increased capacity, and to reconstruct its plant at its various delivery stations; and denies that petitioner will be compelled to provide additional tanks at its pumping stations and terminals so as to reduce the loss by contamination, and denies that petitioner will be compelled to increase the number of its employees, and denies that any outlay of money will be involved which would be wasted if the order should finally be held to be unlawful. Respondent alleges that even though the petitioner may be obliged to incur some expense in providing facilities to receive, transport, and deliver oil for other producers and shippers, and to comply with the acts to regulate commerce, its outlays in that behalf will be slight as compared with its outlays and expenditures incurred in schemes, devices, and arrangements for the purpose of thwarting the laws of the State of Ohio and the acts to regulate commerce and evading the provisions thereof.

Respondent admits that there are many shippers desiring to ship oil through the petitioner's said pipe lines, and who are now prohibited from so doing, but who will be entitled to do so in the event the said order is sustained. Respondent has no knowledge that if the said order be not obeyed by petitioner that many suits for damages are liable to be brought against petitioner by shippers desiring to ship oil through petitioner's said lines, whereby petitioner would be subjected to a multiplicity of suits and to great expense, loss, and damage, and it neither

admits nor denies the same; and if the same becomes material upon the hearing, it will require strict proof thereof. Respondent denies that the petitioner will suffer irreparable injury should it not be protected from compliance with the said order of June 3, 1912, in the event the said order is finally set aside and annulled.

IX. Answering further the said petition, this respondent alleges that the crude oil produced in the United States is described by "fields," and they are known as the Pennsylvania or Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, Kentucky, and Tennessee; the Illinois, Indiana, and Ohio fields, herein referred to, covering parts of these States; the Mid-Continent field, covering parts of the States of Kansas and Oklahoma; the Gulf field, covering parts of the States of Louisiana and Texas; and smaller fields in the States of California, Colorado, Wyoming, Michigan, and Missouri; that the annual products of crude oil within the United States, as shown by the official statistics for the calendar year 1910 (the last official figures available) were 209,556,048 barrels of the value of $127,896,328; and that the Illinois, Indiana, and Ohio fields, from which the pipe-line of the petitioner herein is operated, produced a substantial portion of the total production. Respondent is informed and believes, and upon such information and belief, it charges that the line so described, in connection with other pipe lines of the petitioner, and the pipe lines of other persons, firms, and corporations, form a part of

a continuous network or system of pipe lines in the States of New Jersey, Pennsylvania, New York, Ohio, Indiana, Illinois, Oklahoma, Kansas, and other States of the United States, aggregating approximately 40,000 miles, extending to and from what is known as the Mid-Continent field in the States of Kansas and Oklahoma, southward to Baton Rouge, Louisiana, and northward and eastward between the Great Lakes and the Ohio River to the Atlantic Ocean at New York Harbor and Baltimore. Respondent alleges that the pipe line described in the petition as running to Centerbridge, Pa., is a section of the system of pipe lines of the petitioner, and it does not constitute a separate, distinct, and independent pipe line, and unless used in connection with, and as a part of other pipe lines of the petitioner and the pipe lines of the National Transit Company and the Standard Oil Company of New Jersey, as the same connect at Centerbridge, where there are no refineries and no market for the sale of crude oil or the refined products thereof, the said pipe line of the petitioner would become useless and of no value, and the transportation of oil eastward therein would cease.

Respondent alleges that the National Transit Company was and is a corporation organized under the laws of the State of Pennsylvania, with power to receive, transport by pipe line, and deliver crude oil, and to own, control, and operate pipe lines, tanks, and other facilities for the purpose of handling and transporting crude oil in interstate commerce from

and through the State of Pennsylvania, and other States of the United States, to and through the States of New York, New Jersey, and Maryland, and is now engaged in interstate commerce, and is submitting to regulation by the Interstate Commerce Commission. The New York Transit Company was and is a corporation organized under the laws of the State of New York, with power to receive, transport by pipe line and deliver crude oil, and to own, control, and operate pipe lines, tanks, and other facilities in the State of New York and other States of the United States and is now engaged in interstate commerce, and is submitting itself to regulation by the Interstate Commerce Commission. Said National Transit Company and New York Transit Company did, prior to the year 1906, own, operate, and control a system of pipe lines extending from the Ohio and Pennsylvania fields eastward through and across the southern part of the State of New York, thence southward through the State of New Jersey to New York Harbor, where the large refineries of the Standard Oil Company of New York and Standard Oil Company of New Jersey were and are located; and owned, operated, and controlled a trunk pipe line from the Appalachian field in northwestern Pennsylvania southeastward to Millway, a point in southeastern Pennsylvania, where the said pipe line connected with another trunk pipe line of the National Transit Company running northeastward through Centerbridge, Pa., to New York Harbor, and southward to Baltimore, at which points the refineries

of the said Standard Oil companies were and are also located. The trunk pipe line of the petitioner herein, extending from the Illinois, Indiana, and Ohio fields eastward to Centerbridge, Pa., connects with the pipe line of the National Transit Company and a section of pipe line of the Standard Oil Company of New Jersey, and is operated in conjunction therewith; through the pipe line of the petitioner and the National Transit Company and Standard Oil Company of New Jersey, which constitutes a continuous and unbroken pipe line from the Illinois, Indiana, and Ohio fields to New York Harbor and Baltimore, crude oil is transported in interstate commerce by said three companies from said fields to said points. The capital stock of the petitioner herein was and is $10,000,000, of which the Standard Oil Company of New Jersey, until recently, owned $9,999,850; the capital stock of the National Transit Company was and is $25,455,200, of which the Standard Oil Company of New Jersey, until recently, owned $25,451,650; the capital stock of the New York Transit Company was and is $5,000,000, and the Standard Oil Company of New Jersey, until recently, owned all of the same; the capital stock of the Standard Oil Company of New York was and is $15,000,000, and the Standard Oil Company of New Jersey, until recently, owned all of the same; said Standard Oil Company of New York and said Standard Oil Company of New Jersey, which own and operate large refineries of crude oil at and around New York

Harbor and at Baltimore, were, and now are, as shippers of crude oil the exclusive patrons of the said pipe line companies as common carriers of crude oil by pipe line, and that for the purpose of mining, producing, purchasing, transporting by pipe line and refining the crude oil and marketing the products thereof, the said companies were, until recently, though separate and distinct corporations, virtually one and the same, with one and the same management and control.

Respondent alleges that the cost of transportation of crude oil by pipe line is but a small fraction of the cost of transportation of crude oil by railroad, and common carriers by railroad are unable to compete with common carriers by pipe line in the transportation of oil; that persons, firms, and corporations engaged in the business of producing and selling crude oil who do not own and operate a pipe line, and who are deprived of the use of pipe lines as a means of transportation, are without means of transportation except by railroad, and the rates and charges of railroad companies are so high that producers of crude oil without the use of pipe lines may not compete with the producers and sellers of crude oil who have the use of pipe lines; the producers and sellers of crude oil without pipe lines have no alternative but to sell their oil to the producers and purchasers of crude oil who own and operate pipe lines, at such prices as the latter may dictate and upon such terms and conditions as they may impose, which results in

the preferences and discriminations forbidden by the act to regulate commerce.

Respondent alleges that the petitioner herein, operating jointly and in concert with National Transit Company and Standard Oil Company of New Jersey, is combining the business of producing and purchasing crude oil and the sale thereof with the business of transporting the same in interstate commerce, which results in a natural tendency to prefer and discriminate, and in thus combining the business of producing and purchasing crude oil and the sale thereof with the business of transporting the same in interstate commerce and its refusal to divorce the business of transporting crude oil in interstate commerce from the production, purchase, and sale thereof, and thus to avoid the natural tendency to prefer and discriminate, forbidden by the act to regulate commerce, the petitioner herein is enabled effectively to and it does control the production and sale of crude oil and the transportation eastward thereof from the Illinois, Indiana and Ohio fields, to the great prejudice and disadvantage of the other producers of crude oil in the said fields, who are without any outlet or market for their said product except through the petitioner herein, acting jointly and in concert with the said other companies; and that in failing to publish and file its tariffs of rates and charges and to receive and transport crude oil for the other producers of the said fields in accordance therewith upon equal terms and conditions with it and with each other it, acting jointly and in concert with the said other two companies, is enabled to

render useless and ineffective for any purposes other than its own the said trunk pipe line from the said fields to Centerbridge; and, acting jointly and in concert with the said other two companies, it is enabled to and does compel such producers in the said fields to sell the crude oil produced by them to it as a pipe line company at such prices as the petitioner and the said other companies may dictate and upon such terms and conditions as they may impose; and in so doing petitioner is making and will continue to make undue preferences and unjust discriminations in favor of and against the communities and persons in the said fields and to prefer each other to the prejudice and disadvantage of other producers and shippers of oil and avoid regulation by the Interstate Commerce Commission, in violation of the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

Respondent alleges that the buying, selling, and storing of oil produces a profit or occasions a loss independent of pipe-line operations and pipe-line transportation, and that it is entirely within the power of petitioner, without injury or detriment to its business of buying, selling, and storing oil, and independently thereof, to receive, store, transport by pipe line, and deliver, the oil of other persons, firms, and corporations tendering the same for such purposes.

Respondent alleges that the methods of arranging the operations of a pipe line as a common carrier would be affected only by the degree of uniformity

in the quality of the oil placed in the pipes by the various shippers; that if the oil of different shippers is practically uniform in quality, shippers would ordinarily be willing to turn their oil directly into the common stock and to receive at destination an average mixture; if, on the other hand, the oils from different wells or from different small pools of a field vary widely in quality, two different methods might be pursued; that is to say, the pipe-line company might keep shipments of different qualities separate, or an arrangement might be made for differentials in value of the different grades, so that a shipper putting a given grade of oil into the pipe line and receiving at destination an oil of different quality would either pay to or receive from the pipe-line company a sum representing the difference in value. And this respondent alleges that if the oil of the Illinois field is of a quality that for purchasing, transporting, and selling the same it must be kept separate and apart from other grades of oil, that the petitioner is compelled to transport the oil in that manner for itself, and in discharging its duties and obligations as a common carrier it would not be obliged to transport the oil of other persons, firms, and corporations in any manner other or different than it transports oil for itself.

Respondent alleges that the Texas Company, a corporation, the largest oil company in the United States excepting the Standard Oil Company and its constituent companies, owns and operates a system of pipe lines from the Mid-Continent field southward

to points in the State of Texas and on the Gulf of Mexico, and is acting as a common carrier of oil by pipe line in interstate commerce, and has published and filed tariffs in compliance with the act of Congress in such case made and provided, and is receiving, transporting, and delivering oils of various grades and qualities through the same pipe without any material mixture when reasonable care is taken, and that it is entirely practicable so to do.

Respondent alleges that the Gulf Pipe Line Company, which operates a pipe line extending from the Mid-Continent field, in the State of Oklahoma, to Port Arthur, in the State of Texas, is acting as a common carrier of oil by pipe line in interstate commerce, and has published and filed tariffs in compliance with the act of Congress in such case made and provided, and is receiving and transporting oil through the same pipe and is making deliveries of a like quantity of a like quality of oil so received, and that it is entirely practicable so to do.

Respondent alleges that there are other persons, firms, and corporations in certain of the States east of the Mississippi River acting as common carriers of oil by pipe line in interstate commerce, and have published and filed tariffs in compliance with the act of Congress in such case made and provided, and are receiving, transporting, and delivering oils through the same pipe in manner and form as the Texas Company and the Gulf Pipe Line Company are doing, and that it is entirely practicable so to do.

Further answering the said petition, this respondent alleges that, as shown by Exhibit A attached to the

petition, complaint was made to the Interstate Commerce Commission that a large number of common carriers by pipe line, of which the petitioner was one, had established certain rates, classifications, and regulations which were unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of the act to regulate commerce and the acts amendatory thereof and supplementary thereto, and that the practices of said common carriers, in the conduct of business and subject to said act were unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial and otherwise in violation of the provisions of said act, and that, by reason thereof, the commission instituted an inquiry on its own motion, and inquired into the matters and things complained of; that after a full hearing the commission notified and required 12 of said large number of companies to file with the commission schedules of their rates and charges for the transportation of oil in compliance with the provisions of the act to regulate commerce. Respondent alleges that of said 12 companies, 7 thereof have filed petitions seeking to attack the order of the commission in question, and that the 5 remaining companies are engaged extensively in mining, producing, purchasing, selling, receiving, transporting by pipe line and delivering crude oil, and are thus engaged in interstate commerce in the same manner as the petitioner herein. They and each of them are named as parties to the order of the Interstate Commerce Commission, and are by it directed to

file their schedules of rates and charges for the transportation of crude oil in compliance with the provisions of the act to regulate commerce. None of said 5 companies has filed a petition in this court to set aside and annul the said order or for an injunction against the same. This respondent is informed and believes, and upon such information and belief it charges, that each of the said 5 remaining companies in said order named is undertaking to comply with the provisions of the said order, and will comply with the provisions thereof if the said order is allowed to remain in force and effect, and will submit itself to the provisions of the act to regulate commerce and to regulation by the Interstate Commerce Commission. Respondent is informed and believes, and upon such information and belief it charges, that if a temporary restraining order is issued herein, or if the said order of the commission is finally annulled and enjoined, many of the other companies investigated by the commission which are complying with the provisions of the act to regulate commerce in such a way as not to require further present action on the part of the commission, and the other 5 companies named in the order of the commission which have not filed petitions herein, or some of them, will attempt to divest themselves of their obligations and duties as common carriers by pipe lines and avoid regulation as such and that much chaos and confusion will result, to the great prejudice and disadvantage of the producers, shippers, and refiners of crude oil throughout various States of the United States.

Respondent alleges that The Tide Water Pipe Company (Limited), Standard Oil Company of New Jersey, Standard Oil Company of Louisiana, The Prairie Oil and Gas Company and the petitioner herein, commonly known as "Standard Oil Companies," are all directed by the said order of the Interstate Commerce Commission, which is a joint order, to file with the commission, on or before November 1, 1912, schedules of their rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce. Each has filed in this court its separate petition for an injunction against the said joint order of the Interstate Commerce Commission and for an order annulling and suspending the same; each of said companies is interested, either directly or indirectly, in the cases of the other of said companies. For the purpose of showing the relation existing among the said companies, or between any two or more of them, this respondent prays leave to refer to the petitions and answers and other records and proceedings in said causes, or any of them.

Respondent alleges that the petitioner, a corporation engaged in the transportation of oil by means of pipe lines in interstate commerce, has refused and is now refusing to comply with the provisions of the act to regulate commerce relating to pipe lines, in defiance of the provisions of the said act and in defiance of the order of the Interstate Commerce Commission. The failure of the petitioner to comply with the provisions of the act to regulate commerce,

as directed by the order of the Interstate Commerce Commission, is inimical to the general welfare of the people of the United States, contrary to law, and contrary to the public policy of the United States as declared and established by the Congress.

Respondent denies each and every allegation in the said petition contained not herein specifically admitted, denied, or otherwise traversed.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioner.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Blackburn Esterline, being duly sworn, says that he is Special Assistant to the Attorney General of the United States, and that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes them to be true. He further states that he is authorized to sign the said answer for the United States of America, the respondent in said cause, by the Attorney General of the United States.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 16th day of September, A. D. 1912.

[SEAL.] J. H. MACKEY,
Notary Public, District of Columbia.

O

42 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER, *v.* THE UNITED STATES OF AMERICA, RESPONDENT, Interstate Commerce Commission, intervening respondent.	In Equity. No. 7

Answer of the Interstate Commerce Commission. Filed September 16, 1912.

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering, says:

I.

This respondent admits that the petitioner, The Ohio Oil Company, is a corporation duly organized under the general laws of the State of Ohio providing for the organization of corporations for profit; that the charter of the petitioner states, among other things,
43 that said corporation is organized for the purpose of transporting petroleum crude oil, "where produced or owned by it," and that the said charter was afterwards amended so as to authorize the transportation of oil "when produced, owned, or acquired by it." But this respondent alleges that the said general incorporation act of Ohio provides that any number of persons, not less than five, a majority of whom are citizens of that State, may form a corporation "for any purpose for which natural persons lawfully may associate themselves," except for carrying on professional business; that said act further provides that the parties desiring to form a corporation shall themselves state the "purpose" for which the corporation is organized, and also provides that a corporation so organized may amend its articles of incorporation at any time "so as to modify, enlarge, or diminish the objects or purposes for which it was formed so as to add to them anything omitted from or which lawfully might have been provided for originally in such articles." The phrase in said charter, as amended, limiting the power to transport oil to oil "when produced, owned, or acquired by it" was and is, the premises considered, a self-imposed limitation by the company, and not a limitation imposed by the State; that if said provision in its charter is a limitation upon its powers—which this respondent does not admit—the same can be modified or changed at any time by the company if it desires to be relieved of such self-imposed limitation. This respondent therefore alleges that the said provision in its charter is wholly irrelevant and immaterial to the determination of the matters in controversy in this suit.

44 II.

Further answering, this respondent admits that the petitioner is engaged in the business of producing, purchasing, and selling crude oil in the States of Ohio, Indiana, and Illinois and in other States; that it has constructed, owns, and operates pipe lines passing through the States aforesaid; and that it has leased and operates a pipe line running from its main line at or near Negley, Ohio, to Centerbridge, in the State of Pennsylvania; that said pipe lines have been and are used by the petitioner for the transportation of crude oil which it has produced or purchased as hereinafter described. This respondent denies the allegations in said petition, and each of them, which in words or effect allege that the petitioner has not transported through its said pipe lines oil belonging to other parties. On the contrary, this respondent is informed, and therefore alleges, that said petitioner has transported and is transporting crude oil through its pipe lines which is owned or is transported for refining companies and other persons to whom said oil is consigned and delivered; that by through-route arrangements and joint rates the petitioner has transported and is transporting crude oil through its pipe lines and connecting pipe lines to refineries in other States than those above named, among which are refineries in the States of Indiana, New York, and New Jersey; that the crude oil produced, purchased, and shipped, as aforesaid, is principally for the use of the refineries
45 owned or controlled by the Standard Oil Company of New Jersey and its subsidiary or affiliated companies, and that the prices paid for said crude oil at points of origin and the prices received by the petitioner for said crude oil are fixed and determined by the said refineries.

This respondent, further answering, alleges that receiving and storage tanks, as maintained by the petitioner, are a necessary and essential equipment to and a part of the pipe-line transportation facilities operated by the petitioner; that whether said crude oil transported by the petitioner as aforesaid is produced at the points of origin from wells owned or operated by the petitioner, or whether said crude oil so transported has been purchased by the petitioner at the points of origin, or whether the petitioner has refused to transport crude oil for other persons, firms, or corporations than the refineries herein named, or has not heretofore made or published rates or tariffs for transportation services, are and each alleged fact aforesaid is wholly irrelevant and immaterial to the determination of the questions and issues involved herein.

III.

This respondent admits that the petitioner can not exercise the power of eminent domain, but this respondent denies that the petitioner has no franchises and has not received and is not enjoying such grants from State or Federal authority; and this respondent also denies the allegations, and each of them, that all of the
46 petitioner's pipe lines have been built upon private right of

way acquired by purchase. On the contrary, this respondent alleges that the said pipe lines operated by the petitioner at very many points too numerous to specify are located upon and cross the rights of way of various railroad companies, which railroad rights of way were originally acquired by public grants or by power of eminent domain and are subject to all the rights, privileges, and powers in such cases retained and vested in the States through which they run and which rights, privileges, and powers retained and vested in the States as aforesaid do, and each of them does, appertain to the right of way acquired or occupied by the pipe lines of the petitioner; and that said pipe lines of the petitioner at innumerable points cross or are laid upon public highways and streets, the privilege to so cross or lay pipes along said highways was granted or is permitted by the States, respectively, in which the same are located, and that the right of way of the said petitioner's pipe line is subject to all the rights and powers existing in the States over their public highways.

IV.

This respondent further answering admits that the petitioner does not hold itself out as a common carrier nor does it offer to carry oil for the public; but this respondent alleges that, the premises considered, the petitioner is a common carrier because and by reason of the fact that it transports oil by means of pipe lines from
47 one State in the United States to another State in the United States, and, because of the act of Congress hereinafter referred to, the petitioner is a common carrier under said act.

V.

This respondent denies each and every allegation in said petition in words or to the effect that a compliance with the order in question will unlawfully subject the petitioner to a readjustment and rearrangement of its business; or that a compliance with said order will cause great and irreparable loss to the petitioner; or that it will be compelled to transport through its pipe lines oils of such varying grades or gravities as would result in a substantial depreciation of the oil produced, purchased, and transported by the petitioner through its pipe lines; or that the petitioner can not transport crude oil through its pipe lines for several owners or shippers; or that it can not make rates for such transportation. On the contrary, this respondent alleges that the petitioner, with many other carriers, is sending shipments through connecting pipe lines and delivering single and independent shipments to stations and refineries, and that the segregation of such shipments, and the making of separate rates and charges therefor, is practicable and of daily occurrence.

VI.

Further answering said petition, this respondent, upon information and belief, says that the outstanding capital stock of The Ohio
48 Oil Company, petitioner herein, is $15,000,000 par value; that

at and prior to its compliance with a certain decree entered and enforced under and in compliance with a decision of the Supreme Court of the United States, in a proceeding entitled Standard Oil Company v. United States (221 U. S., 1), the Standard Oil Company of New Jersey held and owned $14,999,850 of the said capital stock of The Ohio Oil Company; that all or substantially all of the crude oil produced, purchased, and shipped by the petitioning company was transported by it and connecting lines to the refineries owned or controlled by the said Standard Oil Company; that the said Ohio Oil Company was in fact a subsidiary company of, and was managed and controlled by, the said Standard Oil Company; that since the decree aforesaid, and the distribution of the stock of the petitioning company held by the Standard Oil Company to the stockholders of the Standard Oil Company, the petitioner still continues to ship and transport the crude oil produced, purchased, and transported as aforesaid to the refineries of the Standard Oil Company. This respondent denies the allegation in said petition that said pipe line is operated by the petitioner as a "plant facility" to its business of producing and purchasing crude oil. On the contrary this respondent alleges that said pipe line, so operated by the petitioner as aforesaid, has been and is a transportation facility of, and a means of monopolizing, as hereinafter set forth, crude oil by, the refineries of the said Standard Oil Company; that by
49 means thereof the said refineries arbitrarily fix the price of crude oil at the points of production and delivery to the petitioner; and that said oil is purchased for said refineries, is to be delivered direct to said refineries, and the said oil transported through the pipe lines of the petitioner, is intended for, and is the property of, said Standard Oil Company.

VII.

This respondent admits and alleges, that it made the order complained of, and served the same upon the petitioner; that it conducted the hearing referred to, and that the petitioner appeared at said hearing and then and there submitted a statement of facts substantially as set forth in the petition herein, with oral argument and printed briefs thereon; that after due and full consideration of all the statements of facts, arguments, and briefs submitted by petitioner aforesaid this respondent, on the 3d day of June, 1912, made, rendered, and published, as required by said act to regulate commerce as amended, its report, findings, and conclusions thereon, and made, entered, and served upon the petitioner the order in controversy; that on July 18, 1912, at the request of the petitioner and other pipe-line companies, said order was amended by making the effective date thereof November 1, 1912.

This respondent alleges that said order was made after a full hearing, of all the matters and things involved therein, had been given and accorded to the petitioner herein, and after due
50 consideration of all the statements of facts, arguments, and

briefs presented to this respondent by said petitioner, as aforesaid; that said hearing was instituted and conducted by this respondent in all respects as required by the act to regulate commerce as amended; that notice of the hearing and copies of the reports and orders in controversy were duly served upon the petitioner; and that this respondent was fully empowered and authorized by the act aforesaid to make and enter said order.

A copy of said report, entitled "No. 4199, In the Matter of Pipe Lines," is attached hereto, marked "Exhibit A," and the same is hereby made a part of this answer. A copy of the said order in question, as amended, is also hereto attached, marked "Exhibit B," and made a part hereof.

That for a more particular description of the pipe lines of the petitioner, and for the purpose of showing the fields of crude-oil production and the connecting pipe lines east of the Rocky Mountains, a map is hereto attached, marked "Exhibit C," and the same is made a part hereof.

VIII.

Further answering, this respondent, upon information and belief, says:

That the crude oil produced in the United States is known by "fields," and the fields are designated as the Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, southeastern Ohio, Kentucky, and Tennessee; the Lima-
51 Indiana and Illinois fields, covering parts of northwestern Ohio, Indiana, and Illinois; the Mid-Continent field, covering parts of the States of Kansas and Oklahoma; the Gulf field, covering parts of the States of Louisiana and Texas; the Caddo field, in Louisiana and Texas; and other fields in the States of California, Colorado, Wyoming, Michigan, and Missouri; that the annual production of crude oil within the United States, as shown by the official statistics for the calendar year 1910 (the last official figures available), was 209,556,048 barrels of the value of $127,896,328. That the pipe lines of the petitioner serve the Lima-Indiana and Illinois fields, as shown upon Exhibit C.

That crude oil produced east of the Rocky Mountains is not much used in its natural state and its market therefor is limited to the refineries of crude oil; that heretofore the business of refining crude oil and transporting it from the fields of production to the refineries was, to a large extent, transacted under a common management or unified control, the pipe line being called an adjunct of the refinery; that the cost of transportation by means of pipe lines is approximately from 20 to 35 per cent of the cost of transportation by any other instrumentality; that by reason of the premises the producers of crude oil were and are wholly dependent for the sale of the product upon transportation by pipe lines to the refineries, and by reason of their location, as herein described, they could not sell or dispose
52 of their said product except to the refineries controlling pipe lines; that by means of the monopoly of said pipe lines the

refineries were able to and did control the output and arbitrarily fix the price of crude oil at the points of production; that the combining of the business of transporting crude oil with the business of refining the same tended to and did create a monopoly and an unreasonable restraint of trade, and subjected the producers of crude oil and the consumers of the refined products thereof to great and unreasonable burdens and restraints in their trade, and was and is injurious to the public.

That prior to the act of Congress hereinafter set forth the Standard Oil Company of New Jersey, through its pipe lines and through the pipe lines of companies in which it was interested and over which it exercised, by ownership and contract, a dominant control, transported, and in its refineries consumed, a large portion of the crude oil produced in the Lima-Indiana and Illinois fields; that by virtue of its control of pipe-line transportation the said company last named fixed the price of crude oil at the wells of production in the fields aforesaid; that through its ownership of the stock of The Ohio Oil Company, petitioner herein, and by virtue of contracts between the Standard Oil Company and the petitioner herein, the said Standard Oil Company controlled, in a large measure, the *p*utput of crude oil and the prices paid therefor at the wells in said fields, served by the petitioner herein.

That by reason of the manner of conducting the business
53 of pipe-line transportation an adjunct or agency of the refineries, the producers of crude oil were, and are, unable to have their oil transported by these pipe lines as common carriers to competing refineries or markets, nor could the producers select the refinery and markets to which they shipped. That in consideration of the premises the Congress of the United States, in the exercise of its plenary power to regulate interstate commerce for the public welfare, and to prevent a monopoly in crude oil by transportation methods and practices, did, by acts approved June 29th, 1906, amended June 18th, 1910, declare, among other things, as follows:

"That the provisions of this act (to regulate commerce) shall apply to any corporation * * * engaged in the transportation of oil * * * by means of pipe lines * * * who shall be considered and held to be common carriers within the meaning and purpose of this act * * *."

And—

"That every common carrier subject to the provisions of this act shall file with the commission created by this act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established."

That by virtue of said acts of Congress all persons, firms,
54 or corporation conducting the business of transporting crude oil from the fields of production to the markets by means of

pipe lines—where such transportation is from points in one State to points in another State within the United States—are common carriers within the meaning and purpose of the act to regulate commerce; that if and so long as the petitioner engages in the business of transporting oil by means of pipe lines from points in one State to points in another State by the means and instrumentalities aforesaid, it is, by reason of the premises and the provisions of the act of Congress aforesaid, a common carrier, and is expressly required by said act to file with this respondent schedules of rates and charges for the transportation of oil; that the order in controversy follows, and is strictly within the express requirements of said act of Congress and therefore is a valid order, binding and obligatory upon the petitioner.

IX.

This respondent denies each and every allegation in said petition contained, to the effect that the ability of the petitioner to carry the oil which it produces or owns will be unlawfully interfered with by segregating its transportation business from the business of producing and buying crude oil, or by full compliance with the order in controversy.

This respondent also denies the allegation that petitioner can not transport crude oil through its pipe line for several owners or shippers, or that it can not make rates for such transportation. On
55 the contrary, respondent alleges that the petitioner, with many other carriers, is sending shipments through connecting pipe lines as aforesaid and delivering single and independent shipments to various stations and refineries, upon rates fixed and determined therefor, and that the segregation of such shipments and making separate rates and charges therefor is of constant and daily occurrence by common carriers by pipe lines.

This defendant further denies each and every allegation in said petition contained, to the effect or in substance that a compliance with said order will operate to deprive the petitioner of its property without due process of law; or that it will in any degree confiscate or take the property of the petitioner for public uses without due compensation; or that it will in any manner whatsoever deprive the petitioner of its constitutional rights, or any of them, guaranteed by the Constitution of the United States.

This respondent also denies that in the hearing and determination of the matters and things set forth and referred to in the report and order herein complained of—being the order In the Matter of Pipe Lines, No. 4199—this respondent acted arbitrarily, or without power or authority in the premises, or that the petitioner did not have a full and fair hearing regarding the matters and things involved in said proceeding and order, or that in any particular whatever this respondent committed any errors or mistakes of law in arriving at its findings and conclusions set forth in said report or in making said order. On the contrary, this respondent alleges that in the
56 hearing and determination of said proceeding, No. 4199, afore-

said, this respondent acted in strict conformity with the requirements of the act to regulate commerce and each provision thereof pertinent to such proceeding and every question involved therein, and within its several powers under said act.

And this respondent alleges that in the exercise of its sovereign power over the subject of interstate commerce, Congress may prohibit or in any manner whatsoever regulate such interstate commerce without regard to the ownership of the property transported, and all persons, firms, or corporations, while not compelled to engage in such interstate commerce, are when so engaged in duty bound to observe and conform to all laws and regulations for the conduct of such interstate commerce prescribed by Congress or by this respondent under the act to regulate commerce.

This respondent denies that this honorable court has jurisdiction to review or determine the wisdom or expediency of an act of the Congress of the United States involving public policy or public welfare in the regulation of interstate commerce, as prayed in said petition, and this respondent avers that its findings of fact and its determination set forth in said report and order are binding and conclusive upon the petitioner and all others concerned therein. This respondent denies each and every allegation in said petition (not) herein expressly admitted or which is contrary to the facts stated in this answer or in respondent's said report.

57 All of which matters and things this respondent is ready to aver, maintain, and prove, as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded or set forth by way of demurrer or motion to dismiss the petition.

And having fully answered said petition, this respondent prays to be hence dismissed, with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM, *Its Solicitor.*

CITY OF WASHINGTON,
District of Columbia, ss:

C. C. McChord, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answers and knows the contents thereof, and that the same is true as to the matters within the knowledge of the commission, and as to the other matters he believes it to be true.

C. C. McCHORD.

Subscribed and sworn to before me, George B. McGinty, a notary public within and for the District of Columbia, this ——— day of September, 1912.

GEORGE B. McGINTY,
Notary Public.

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 4199.
IN THE MATTER OF PIPE LINES.

Submitted May 10, 1912. Decided June 3, 1912.

1. The act to regulate commerce impresses the obligations of a common carrier upon a pipe line engaged in the transportation of oil in interstate commerce, even though such pipe line was built over its privately acquired right of way, and transports only its own oil.
2. Such traffic is not divested of its interstate character by placing the ownership of the pipe line in a different corporation in each state through which the transportation passes, and by transferring title to the oil to each of such corporations contemporaneously with the entrance of the oil into the pipes of that corporation at the state line.
3. Effect of a Kansas statute as to making pipe lines common carriers not considered, as the federal jurisdiction depends upon federal acts. If the federal act is ineffective, a similar statute of an individual state is of no avail.
4. The utilization by a pipe line of the right of way of a common-carrier railroad does not impress upon that pipe line the obligations of a common carrier.
5. A pipe line is not impressed with the obligations of a common carrier merely because, by arrangement with the abutting owner, it uses a public highway for right of way purposes.
6. The transportation by the New York Transit Company in New Jersey and by the National Transit Company in New Jersey and Maryland, prior to November 1, 1905, was transportation by these corporations as common carriers.
7. The transfer by a common-carrier pipe line to a private corporation of a portion of its property theretofore used in its common-carrier operations, but not located in the state wherein it was incorporated as a common carrier, does not release that property from the obligations of a common carrier.
8. Certain pipe-line companies ordered to file with this Commission schedules of their rates and charges.

S H. Smith and *A. G. Gutheim* for Interstate Commerce Commission.

Pillsbury, Madison & Sutro for Standard Oil Company.

Loeb & Loeb for Puente Oil Company.

L. W. Andrews and *T. O. Tolland* for Union Oil Company.

Edmund Tauszky for Associated Oil Company and Associated Pipe Line Company.

J. L. Autry and *A. L. Beaty* for Texas Company.

Greer & Minor for Corsicana Refining Company and others.

F. C. Proctor and *J. B. Diggs* for Gulf Pipe Line Company and others.

W. S. Fitzpatrick for Prairie Gas & Oil Company and others.

C. L. Wallis for Higgins Oil & Fuel Company.

F. A. Parsons for Kansas Cooperative Refining Company.

Martin Carey for Standard Oil Company of New Jersey.

C. O. Swain for Standard Oil Company of New Jersey and Louisiana.

J. G. Milburn and *F. L. Crawford* for Buckeye Pipe Line Company and others.

G. C. Greer for Magnolia Petroleum Company.

C. D. Chamberlain for Emery Pipe Line Company and others.

W. I. Lewis for Tide Water Pipe Company, Limited.

Eugene Mackey for Producers & Refiners' Oil Company, Limited, and others.

REPORT OF THE COMMISSION.

LANE, *Commissioner:*

This is a proceeding instituted by the Commission upon its own initiative. The hearings held in various parts of the country developed certain facts which made it advisable that before continuing to a conclusion of the investigation certain questions of law should be argued before the Commission. Accordingly, upon the record made, seven questions were formulated and presented to the pipe-line companies, into whose operations the investigation had been made. These questions go to the power of the Commission to regulate the rates, rules, and practices of these pipe lines as common carriers. These questions may be summarized into the one interrogatory: Have these pipe lines been placed under the jurisdiction of this Commission as common carriers? We shall proceed to a consideration of the questions propounded.

QUESTION NO. 1.

Does the act to regulate commerce impress the obligations of a common carrier upon a pipe line engaged in the transportation of oil in interstate commerce, even though such pipe line was built over its privately acquired right of way, and (by pursuing a policy of refusing to receive oil into its pipes except as the purchaser of such oil) transports only its own oil?

[See section 1 of the act to regulate commerce as amended June 29, 1906, and consult the record as to the policy of the Texas Company, the Gulf Pipe Line Company, the Ohio Oil Company, and other respondents.]

Section 1 of the act to regulate commerce was amended in 1906 so as to read:

That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except

natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, * * * from one State, Territory, or District of the United States to any other State, Territory, or District of the United States or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this act.

The record discloses that the Prairie Oil & Gas Company, the Ohio Oil Company, and other of the pipe line respondents, have never held themselves out to the world as common carriers, but have made it their business to buy oil at the producing well and transport it by means of their own pipe lines across the state lines and sell it within the other states. They claim to be dealers in oil who use their pipe lines solely to convey their own property from state to state.

Upon these facts the question is raised as to whether the provisions of the section of the act above quoted are applicable to such carriage. Two constructions are given to this statute. It is urged, in the first place, that Congress does not possess the power to require that pipe lines shall not engage in interstate transportation of oil excepting as common carriers, and that an interpretation should be given to the language of the act that would be consonant with the constitutional limitation placed upon Congress. Therefore, it is said that we should seek for a construction that would not make the statute repugnant to the constitution. A safe construction, accordingly, would be one which made the act to read as if written, "All pipe lines transporting oil between the States as common carriers shall become subject to the provisions of the act to regulate commerce." In short, that Congress did not intend to bring under the jurisdiction of the act any pipe lines other than those which hold themselves out as common carriers and that to give another and different interpretation to the act is to accuse Congress of attempting to exercise a power that it does not possess, namely, the power to transform a private carrier into a public carrier by a statutory declaration.

We shall not consider the constitutional question here involved. If there was doubt in our minds as to the purpose of Congress, it would be proper to resolve that doubt upon the side of constitutional safety, but it seems quite manifest to us, from the history of this amendment to the act and from its language, that Congress intended to convert the interstate oil pipe lines of the country into common carriers. Whether Congress could lawfully so act is a matter for the courts judicially to decide. The Interstate Commerce Commission is an administrative body which may not presume to annul by interpretation an act of the federal legislature. So far as we are informed, the Supreme Court of the United States has never been called upon to pass upon a question of this character, and while it

may be conceded that Congress could not impose upon a private pipe line the duties and responsibilities of a common carrier, it is not clear but that the provisions of this act could be upheld upon the ground that Congress was establishing a condition to which any pipe line company must conform which transported oil across a state border.

This seems to be the plain meaning of the act, that all pipe lines carrying oil from one state to another state, no matter what their previous status, should be thenceforward considered and deemed to be common carriers. And, to uphold this construction, reference may be made to the history of this provision.

Pipe lines as facilities of interstate commerce were not included in the bill introduced in the Fifty-ninth Congress, first session, which became the basis of the 1906 revision of the act to regulate commerce. Nor, indeed, had such carriers been mentioned in the public hearings held before the Senate Committee on Interstate Commerce during 1905. It was not until May 4, 1906, when the bill had for several months been before Congress, that pipe lines were injected into it. On that date Senator Lodge, of Massachusetts, offered an amendment whereby pipe lines, engaged in the transportation of oil or other commodity, except natural gas or water for municipal purposes, were included in the act.

It is proper to observe that Senator Lodge's modified amendment was offered only a few moments after the receipt by the Senate of the special message from the President transmitting the summary of the report by the Commissioner of the Bureau of Corporations in the Department of Commerce and Labor, on the subject of transportation and freight rates in connection with the oil industry—a report of an investigation undertaken in accordance with a House resolution. This summary and the Commissioner of Corporations complete report, which latter was transmitted to the Senate on May 17, 1906, contained an extended recital of the conditions against which the Lodge amendment was aimed.

During the discussion following the introduction of the amendment, it was suggested that it be limited by placing therein words which would make it applicable only to such pipe lines as "carry for the public." This was objected to by Senators Lodge and Nelson, who stated that the adoption of such language would practically nullify the provision, "because every one of these pipe lines can say, 'We refuse to do business for the public.'" There then followed considerable debate and some further modifications of the amendment, immaterial in this proceeding, were made. Finally, on May 4, the same day it was offered, the amendment passed the Senate, making the law applicable to "any corporation or any person or persons engaged in the transportation of oil or other commodity,

except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water."

Later there was some further discussion of this amendment, principally concerned with its effect when read in connection with the Elkins amendment, now known as the commodities clause. At this time there was again raised the question whether the Lodge amendment was intended to and did place all pipe lines, whether or not carrying for the public, under the law. It was argued that unless the pipe lines enjoyed and exercised the right of eminent domain, or transported for hire, or perhaps both, Congress could not declare them to be common carriers in interstate commerce, and various limitations of the Lodge amendment were proposed accordingly. Senator Lodge answered that by inserting the words "transportation for hire" or "transportation for the public," and thereby limiting its applicability to pipe lines engaged in such transportation, his amendment would be absolutely destroyed. In explanation, he said that the practice of the pipe lines of buying oil at the well was the reason why such words would nullify his amendment, and he added that these pipe lines were ordinary common carriers when they chose to be. The amendment was not changed.

But the action of the Senate upon the return of the bill from the second conference leaves no room whatever to doubt that the Lodge amendment was intended to make common carriers of all pipe lines engaged in the interstate transportation of oil or other commodity, except water and except natural or artificial gas. The bill, as returned from the first conference, showed the Lodge amendment stricken from the first paragraph of section one and added to the so-called Bailey amendment, which is now the first sentence of the second paragraph of section one. When the bill came back from the second conference, the pipe-line provision had been removed from the Bailey amendment and thrown back into the opening sentence of section one. Senator Tillman, in charge of the bill, expressed some doubt as to whether this arrangement made it clear that the amendment was to cover *all* pipe lines. Thereupon a discussion arose similar to that which had engaged the attention of the Senate before. The record of this debate shows plainly that it was the opinion of the Senators that the Lodge amendment, arranged as originally proposed by Senator Lodge, in the first paragraph of section one of the act, was sufficient to accomplish the purpose and intent of the Senate and to place *all* pipe lines as described in the amendment under the law and within the jurisdiction of the Commission.

Before the bill was finally passed, the Senators received numerous communications from parties connected with the petroleum industry

protesting against what the communications usually termed the "oil amendment." This resulted in additional discussion of the subject, and the old question was again considered, with the same result, that is, that the intent of the Senate was that all interstate pipe lines described in the amendment should be henceforth regarded as common carriers. Throughout the discussion there is abundant evidence that Congress passed this act for the purpose of subjecting all interstate pipe lines carrying oil to federal regulation, and took this action consciously, in the presence of the very constitutional question now raised as to its power.

The answer to Question No. 1 will be in the affirmative.

QUESTION NO. 2.

Assuming Question No. 1 to be answered affirmatively, is such traffic divested of its interstate character by placing the ownership of the pipe line in a different corporation in each state through which the transportation passes, and by transferring title to the oil to each of such corporations contemporaneously with the entrance of the oil into the pipes of that corporation at the state line?

[See record as to Oklahoma Pipe Line Company, Prairie Oil & Gas Company, and Standard Oil Company of Louisiana.]

Oil from Oklahoma points is transported by the Oklahoma Pipe Line Company, a corporation common carrier of the state of Oklahoma, for the Prairie Oil & Gas Company as a shipper, to McCurtain on the Oklahoma-Arkansas state line. There it is said to be delivered to the Prairie Oil & Gas Company which transports it through its own pipe line across the southwestern corner of Arkansas, to Ida, on the Arkansas-Louisiana state line, where delivery is said to be made to the Standard Oil Company of Louisiana. This latter company owns a pipe line from Ida to Baton Rouge, La., and through it transports the oil to its refinery at Baton Rouge, and it is there refined.

It is not denied that the oil when it leaves the Oklahoma points is at that time destined for storage in Louisiana and for ultimate delivery at Baton Rouge, La. At McCurtain, on the Oklahoma-Arkansas state line, possession passes from a common carrier to the owner's so-called private carrier. It also appears that title passes to the Standard Oil Company of Louisiana at the point called Ida within the state of Louisiana, and the transportation beyond to Baton Rouge is by that company as the owner of the oil through its private pipe line.

It may be first pointed out that the change of title, breakage of bulk, stoppage in transit, or whatever it may be that happens at these state-line points, is not made in good faith for some necessary purpose. Therefore, when it is claimed that such an operation is

not interstate in character, this claim is made in violation of the letter and spirit of section 7 of the act, which reads as follows:

> That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

And, in this connection, it may be well to recall the language of the Supreme Court of the United States in a recent decision, *Dozier* v. *Alabama*, 218 U. S., 124:

> What is commerce among the states is a question depending upon broader considerations than the existence of a technically binding contract, or the time and place where the title passed.

Further than this, it may be added that this state to state arrangement does not meet the Supreme Court test of state traffic. For after arrival of the oil at the state line, the owner does not "there and then for the first time and independently of any existing arrangement" with the pipe lines that had transported the oil thither, arrange for the transportation beyond. This is the test in the Social Circle case. *C. N. O. & T. P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S., 184, 192. See, also, *G. C. & S. F. Ry. Co.* v. *Texas*, 204 U. S., 414.

But, beyond any argument of the law, it may be said that the facts which this question presumes do not exist. This state-to-state operation from Oklahoma to Baton Rouge, La., and likewise the New Jersey and Maryland operations of the Standard Oil Company of New Jersey (hereinafter discussed under Questions 6 and 7), are supposedly accomplished by the location of pumping stations, or relay stations *upon the state lines*. Consider a line in its geometrical capacity, possessing only length, but neither breadth not thickness, and contemplate the absurdity of such a line being the location of a pumping station, with its equipment of engines, boilers, tanks, and accessories. Moreover, the record shows that these locations on the state lines exist only in the intent of the pipe-line companies—in fact, they are generally several hundred feet away from the line.

Our conclusion is that the traffic referred to is not divested of its interstate character by the devices shown in the record.

QUESTION NO. 3.

> If a pipe line for the transportation of crude oil is built upon its privately acquired right of way, by a private corporation holding a charter subject to amendment or

repeal, and the state wherein it was incorporated and wherein its pipe line is laid, later passes legislation declaring all such pipe lines to be common carriers, does such a pipe line, built before the enactment of such legislation, thereby become impressed with the obligations of a common carrier?

[See record as to Prairie Oil & Gas Company.]

The Prairie Oil & Gas Company was incorporated under the laws of the state of Kansas in 1900, among its charter powers being the power to build and operate pipe lines. The constitution of the state of Kansas (art. 12, corporations, sec. 210, corporate powers; sec. 1) provides that—

> The legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed.

In 1905 the Kansas legislature passed a law providing that—

> All pipe lines laid, built, or maintained within the state of Kansas are hereby declared to be common carriers, and said conveyance of said oil shall be in the manner and under the restrictions in this act provided.

No necessity exists for the consideration of the effect of this Kansas statute. The federal jurisdiction depends upon federal acts. If the federal act is ineffective, surely a similar statute of an individual state is of no avail.

QUESTION NO. 4.

Does the utilization by a pipe line of the right of way of a common-carrier railroad impress upon that pipe line the obligations of a common carrier?

[See record as to Prairie Oil & Gas Company and Ohio Oil Company.]

The pipe line of the Prairie Oil & Gas Company is built for some three hundred miles upon the right of way of common-carrier railroads, among them the Missouri Pacific and the Atchison, Topeka & Santa Fe, the right so to build having been obtained from the carriers. This, however, is not the only instance of pipe lines so built. The lines of the Ohio Oil Company run for some distance—though perhaps not more than ten miles in all—over the right of way of the Vandalia and other railroads. It also appears from the exhibits in the record that about thirty-four miles of the Standard Oil Company of New Jersey's line from Unionville, N. J., to Bayonne, N. J., and about twelve miles of that company's line from Centerbridge, Pa., to Bayway, N. J., are located on railroad right of way.

While some doubt may exist as to the right by which pipe lines build upon railroad right of way, the mere fact that they are so built does not impress them with common-carrier obligations. This is so because the question whether a facility is a public facility does not depend upon whether it exercises the right of eminent domain. Furthermore, in this question of federal regulation the nature of the title to right of way is not controlling.

This question must be answered negatively.

QUESTION NO. 5.

Does the utilization by a pipe line of a highway acquired for or dedicated to the public use impress upon that pipe line the obligations of a common carrier?

[See record generally, and particularly as to Tidewater Pipe Company.]

The practice of building pipe lines across and along public highways has been shown several times in the course of the proceedings. It appears that the usual policy of the lines is to deal with the owner of the abutting property in acquiring such highway rights upon the theory that such abutting owners own also the fee in the highway, and that the public right therein is a mere easement of passage. That this is the general rule of law there can be no doubt, and the few exceptions occur in states where the question here at issue is unlikely to arise.

We are of the opinion that a pipe line is not impressed with the obligations of a common carrier merely because, by arrangement with the abutting owner, it uses a public highway for right of way purposes.

QUESTION NO. 6.

Assume that throughout a series of years prior to November 1, 1905, the pipe lines of the New York Transit Company in the state of New Jersey, and the pipe lines of the National Transit Company in the states of New Jersey and Maryland, engaged in the transportation of crude oil for the Standard Oil Company of New Jersey, the Seep Agency and others, and that the New York Transit Company was a common carrier by pipe line incorporated under the laws of the state of New York, and that the National Transit Company was a common carrier by pipe line incorporated under the laws of the state of Pennsylvania, was such transportation by these lines in New Jersey and in Maryland transportation by them as common carriers?

[See record as to New York Transit Company and National Transit Company.]

It is clear that these lines entered New Jersey and Maryland in their corporate capacities and equally clear that their operations in these two states were part and parcel of their New York and Pennsylvania operations. The "delivery stations" at the state lines were not then in existence. Certainly the operations in New York and Pennsylvania were then, as they are now, common-carrier operations. These conditions sufficed to make them common carriers in New Jersey and in Maryland. See *McCluer* v. *M. & L. R. R. Co.*, 13 Gray (Mass.), 124. It is immaterial that the patrons of the lines were few in number. The fact remains that these corporations held themselves out to carry through to their Bayonne, Bayway, and Baltimore destinations, and in fact did so carry for such as offered goods for transportation. They were, therefore, common carriers in New Jersey and Maryland within the usually accepted definition of "one who undertakes for hire to transport the goods of such as choose to employ him, from place to place."

Nor does the fact that these lines in New Jersey and Maryland did not exercise the right of eminent domain take them out of the

common-carrier class. It is not the rule that because they exercise the right of eminent domain they shall be held to be common carriers, but rather that because they are common carriers they may be granted the right of eminent domain.

We hold that the transportation by the New York Transit Company in New Jersey and by the National Transit Company in New Jersey and Maryland, prior to November 1, 1905, was transportation by these corporations as common carriers.

QUESTION NO. 7.

Does the transfer by a common-carrier pipe line to a private corporation of a portion of its property theretofore used in its common-carrier operations, but not located in the state wherein it was incorporated as a common carrier, release that property from the obligations of a common carrier?

[See record as to Standard Oil Company of New Jersey, New York Transit Company, and National Transit Company.]

On November 1, 1905, the Standard Oil Company of New Jersey purchased from the New York Transit Company all the latter corporation's pipe-line property in New Jersey, and likewise purchased from the National Transit Company all of that corporation's pipe-line property in New Jersey and Maryland. Prior to November 1, 1905, as has been shown in the discussion of question No. 6, the New York Transit Company acted as a common carrier by pipe line in New Jersey, and the National Transit Company so acted in New Jersey and Maryland. Beginning with November 1, 1905, these new Jersey and Maryland pipe lines were operated by the Standard Oil Company of New Jersey as its private property, and the operations of the New York Transit Company thereafter ceased where its line crossed the New York-New Jersey state line at Unionville, N. Y., while the operations of the National Transit Company ceased at Centerbridge, Pa., on the Pennsylvania-New Jersey state line, and at Fawn Grove, Pa., on the Pennsylvania-Maryland state line.

There is a line of authorities which permits a common carrier to abandon operations which can not be profitably conducted, but no element of abandonment exists in this question. These New Jersey and Maryland lines, after November 1, 1905, handled the same flow of interstate commerce which had passed through them before that date.

The facts in the case show rather an arrangement whereby a common carrier divested itself of its terminals and turned them over to its principal patron for that patron's sole use. And the entire and complete failure of the government and of this Commission to obtain any reason for this transfer of property on November 1, 1905, fairly warrants the inference that it was done in anticipation of legislation which was enacted in June, 1906, and which was foreshadowed by the

activities of a departmental bureau which was then and for some time had been investigating conditions in the petroleum industry in response to a Congressional resolution.

The seventh question must be answered negatively.

In accordance with these conclusions, an order will be entered against the Oklahoma Pipe Line Company, The Prairie Oil & Gas Company, Standard Oil Company of Louisiana, The Ohio Oil Company, Standard Oil Company of New Jersey, The Tidewater Pipe Company, Limited, Producers & Refiners Oil Company, Limited, United States Pipe Line Company, Pure Oil Company, Pure Oil Pipe Line Company, The National Pipe Line Company, The Uncle Sam Oil Company, and The Uncle Sam Oil Company of Kansas, that they file with this Commission on or before September 1, 1912, schedules of their rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 3d day of June, A. D. 1912.

No. 4199.

IN THE MATTER OF PIPE LINES.

This proceeding having been instituted by the Commission on its own motion, and investigation having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That respondents, The Oklahoma Pipe Line Company, The Prairie Oil & Gas Company, Standard Oil Company of Louisiana, The Ohio Oil Company, Standard Oil Company of New Jersey, The Tidewater Pipe Company, Limited, Producers & Refiners Oil Company, Limited, United States Pipe Line Company, Pure Oil Company, Pure Oil Pipe Line Company, The National Pipe Line Company, The Uncle Sam Oil Company, and The Uncle Sam Oil Company of Kansas be, and they are hereby, notified and required to file with this Commission, on or before the 1st day of September, 1912, schedules of their rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce.

By the Commission.

[SEAL.]

JOHN H. MARBLE,
Secretary.

○

73 *Petitioner's notice of motion and affidavits. Filed October 21, 1912.*

In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
against
UNITED STATES OF AMERICA, RESPONDENT, AND THE INTERSTATE COMMERCE COMMISSION, intervening respondent. } No. 78.

To UNITED STATES OF AMERICA,
Hon. Winfred T. Denison, Assistant United States Attorney General and of counsel,
Hon. Blackburn Esterline, special assistant to the Attorney General and of counsel;
INTERSTATE COMMERCE COMMISSION,
Hon. Charles W. Needham, assistant solicitor and of counsel.

Please take notice, That on the 24th day of October, 1912, before the United States Commerce Court, at a session thereof to be held in the Southern Building, in the city of Washington, in the District of Columbia, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, upon the verified petition of the
74 petitioner herein and upon the affidavits of James C. Donnell and F. Eugene Hurley, both verified the 18th day of October, 1912; of Burr A. Towl, Forrest M. Towl, and Ernest E. Colling, each verified the 16th day of October, 1912; and of Ward A. Miller, verified the 18th day of October, 1912, copies of all of which are hereto annexed, we shall move this honorable court for a temporary injunction restraining the enforcement and execution of the order of the Interstate Commerce Commission made on the 3rd day of June, 1912, In the Matter of Pipe Lines, No. 4199, referred to in the petition herein as "Exhibit B," as modified by its order of July 18th, 1912, in the same matter, pending the final hearing and determination of the suit, as prayed for in the petition herein, and, in the event of the court not coming to a decision on this application prior to November 1st, 1912, when the aforesaid orders of the Interstate Commerce Commission become effective, for a temporary stay against the execution and enforcement of said orders until a decision upon this application and the making and service of an order thereon, and for such other or further relief, or both, as the circumstances of the case may require and as to the court may seem just and equitable in the premises.

Dated October 19th, 1912.

CARTER, LEDYARD & MILBURN,
Solicitors and of Counsel for Petitioner.

75 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
against
UNITED STATES OF AMERICA, RESPONDENT, AND THE Interstate Commerce Commission, intervening respondent. } No. 78.

STATE OF NEW YORK,
County of New York, ss:

JAMES C. DONNELL, being duly sworn, upon his oath deposes and says: That he resides in Findlay, Ohio; that he is the president of The Ohio Oil Company, the petitioner in the above-entitled suit, and has been such since the 15th day of December, 1911; that for about twelve years prior to said date he was vice president of said company, and that, previous to becoming such vice president, he had been a director of said company since 1889; that ever since said year 1889 deponent has been personally active in and intimately acquainted with the business and affairs of the said company.

Prior to the year 1906 the said The Ohio Oil Company neither owned nor operated any pipe line whatsoever, and its business was confined to producing crude oil and selling such crude oil produced by itself, which was transported through pipe lines belonging
76 to other companies. Prior to said year 1906 the oil produced by said company was all in the so-called Lima-Indiana field, extending over the northwestern portion of Ohio and the eastern portion of Indiana, and in that portion of the so-called Appalachian field which extends into southeastern Ohio. In the year 1906, after the discovery of petroleum in the so-called Illinois field within that State, said company purchased and leased various oil properties in said Illinois field and began to produce oil there. There was at that time no pipe line which reached the Illinois field, and in order to get the oil which it produced to market the said company was compelled to and did build a portion of its present pipe line extending from Martinsville, Illinois, to Pueblo, Indiana. From time to time said company extended its system of pipe lines until its present system was completed, but always for the purpose of getting to market or to delivery or shipping points its own oil, either produced by itself or purchased by it before delivery into the said company's pipe lines. Said company's leased line, which extends across the State of Pennsylvania, was constructed in the year 1908. It is not correct, as stated in the Answer of the Interstate Commerce Commission, that said company has transported or that it is transporting crude oil through said company's pipe lines which is owned or transported for refining companies or other persons to whom said oil is consigned or delivered. On the contrary, deponent, of his own knowledge, avers that at no time has the said The Ohio Oil Company ever transported any crude oil through its pipe lines which was not at the time of

and throughout such transportation owned by the said company in its own right, and it has never transported any crude oil through such pipe lines for any other person or company. It is not a fact, as stated in said answer, that by through-route arrangements or joint rates, said company has transported or is transporting crude oil through its pipe lines or connecting pipe lines to refineries in
77 the States mentioned in said answer or to any refineries or other customers whatsoever. On the contrary, said company does not make and never has made any joint rate or through-route arrangement with any other pipe-line company or transportation company of any sort for the carriage of crude oil or for any other purpose. That said company has never fixed any rate for transporting oil through its pipe lines or any of them or for any purpose whatsoever. It is not a fact, as stated in said answer, that the crude oil produced by the said company is produced principally or at all for the use of the refineries owned or controlled by the Standard Oil Company of New Jersey or by any other companies whatsoever. On the contrary, such crude oil is produced by the said The Ohio Oil Company for its own business, to be sold to such customers as it may have, and it is, in all cases, sold to be delivered at the terminals of the said company's own pipe lines or at points beyond said terminals which are reached through certain of the common carrier pipe lines owned by other companies. This deponent has no knowledge as to what is meant in said answer by the "subsidiary or affiliated companies" of the Standard Oil Company of New Jersey. On information and belief, however, this deponent denies that any of the companies to which the said The Ohio Oil Company sells crude oil, other than said Standard Oil Company of New Jersey, are subsidiary to said last-named company or affiliated with it.

Deponent denies that the prices paid at the points of origin for the crude oil purchased by said The Ohio Oil Company, or that the prices received by said company for such crude oil, or for any crude oil sold by said company, are fixed or determined by any refineries or by any companies owning refineries, and, on the contrary, deponent avers that the prices paid by said The Ohio Oil Company for crude oil purchased by it are determined by supply and demand, and the prices received by said The Ohio Oil Company are determined by said company itself as the prices at which it will sell its crude oil.

In corroboration of this averment, deponent points to the fact
78 that, during the present year, the price of the so-called "light" crude oil at the wells in the Illinois field has risen not less than 17 cents per barrel.

That all crude oil sold by said company is sold to be delivered at an agreed point or points, and the title to such oil does not pass until such delivery. Generally speaking, the points of delivery are at refineries owned by the customer, but, in some instances, oil belonging to said The Ohio Oil Company which, at the time, is contained in one of the common carrier pipe lines is sold for delivery where it is.

For example, one of the large customers of petitioner The Ohio Oil Company is the Craig Oil Company, at Toledo, Ohio. Crude oil is sold by the petitioner to said Craig Oil Company from time to time on orders conveyed by correspondence for such amounts as are needed for the current wants of said Craig Oil Company. Such oil is usually sold deliverable at the refinery of the Craig Oil Company, in Toledo, but has sometimes been sold deliverable in the pipe lines of the Buckeye Pipe Line Company, so called, a common-carrier pipeline company in northern Ohio. Where the oil is to be transported beyond the petitioner's own pipe lines, it is so transported through some of the common-carrier pipe lines, the pipage charges are paid by petitioner, and the price to the customer is the price at the point of delivery, which, of course, takes into account what it has cost the petitioner to get the oil to the delivery point. One of petitioner's customers is the Atlantic Refining Company, to which crude oil is sold deliverable at Marcus Hook, at Pittsburgh, and at other points where that company has refineries. The price to the said company for crude oil sold to it is the price at the point of delivery, which price takes into account the expense of getting the oil to the delivery point. It is necessary to employ common carrier pipe lines to get such crude oil to these various refineries of the Atlantic Refin-
79 ing Company, the oil being carried through petitioner's own lines to points where they make delivery to the common-carrier lines. All the pipage charges of the common-carrier lines for transportation to the delivery points in such cases are paid by the petitioner, which remains the owner of said crude oil for all purposes down to the time of delivery at the delivery points. This method of doing business has existed ever since petitioner's pipe lines were first built, and has never to deponent's knowledge been departed from.

At the present time, all the pipe lines belonging to The Ohio Oil Company are being operated at their full capacity for the transportation of crude oil belonging to said company, all of which it requires for the supply of crude oil to its various customers and for the carrying on of its business. If compelled to act as a common carrier, part of the crude oil now carried in petitioner's pipe lines and belonging to petitioner, as aforesaid, would necessarily be displaced, and such displacement might reach a large amount. Most of the crude oil carried through petitioner's pipe lines at present comes from the said Illinois field, located in the southeastern part of that State. At the present time, upwards of 18,000 barrels of crude oil per day are shipped from the Illinois field by other shippers, any part or all of which crude oil might be tendered to petitioner for carriage in its pipe lines, if petitioner were obliged to assume the obligations of a common carrier. Moreover, petitioner's lines pass through those parts of Indiana and Ohio in which are located the so-called Indiana and North and South Lima fields, and it is probable that large tenders of the oil from those fields would be offered to petitioner for transportation. To the extent that petitioner might be compelled to carry any

oil so tendered to it, petitioner's own supply of crude oil would be diminished and petitioner would suffer loss, not merely by way of unearned profits, but through inability to maintain its trade with its various customers. In view of the fact that the petitioner now
80 necessarily and for its established trade moves from the Illinois field upwards of 70,000 barrels of crude oil per day, which oil is about one-half produced by it and one-half purchased by it and has a value of 87 cents per barrel at the well, it follows that the possible losses due to compulsory transportation for others through petitioner's pipe lines might reach a large sum.

The only way in which this loss could be overcome would be by an increase in the capacity of the pipe lines of petitioner. Such increase would involve the building of at least one more pipe throughout the entire length of the system, with additional tanks at pumping stations and delivery points. Pipe such as are employed in petitioner's pipe lines cost laid about $5,000 per mile. The entire length of petitioner's lines, owned and leased, is about 900 miles. The cost of a single tank with a capacity of 35,000 barrels, which is the standard size, is at least $8,000. Such an increase in the capacity of petitioner's lines could not, in any event, be made in less than twelve months, and during the interval petitioner would have to bear the loss due to the decrease in its supply, as above explained, and, if the order of the Interstate Commerce Commission dated June 3rd, 1912, should finally be held to be unlawful, the outlay for such new capacity would be substantially wasted.

Another serious cause of loss which would arise if petitioner were required to transport crude oil for others is the contamination due to the mixing of oils of different kinds in the pipe lines. As already stated, it is the fact that petitioner's lines pass through those parts of Ohio and Indiana in which lies the Lima-Indiana field yielding what are known generically as "Trenton Rock" oils. These include those from the North Lima and South Lima fields in Ohio and from the Eastern Indiana field. All these "Trenton Rock" crude oils are strongly impregnated with sulphur, and, as is well known, greatly impair for ordinary purposes any "sweet" oils with which
81 they are mixed, since even a very slight mixture of sulphur with the ordinary crude oil makes necessary the peculiar process of refining by which alone sulphur bearing or "sour" crude oils can be refined. Petitioner at present does not admit any of the so-called "Trenton Rock" oils into its pipe lines. If petitioner be made a common carrier, there is no reason why large tenders of these "sour" or sulphur-bearing oils should not be made to petitioner by shippers who may wish to forward oils from either the Indiana field or from the North Lima or South Lima fields to eastern points. Large portions of petitioner's trunk pipe lines consist of a single pipe. Thus, the entire line from Martinsville to Wood River, a distance of 127 miles, consists of one eight-inch pipe; the line from Sandoval, Illinois, to Vandalia, in the same State, a distance of 24.5

miles, consists of one six-inch pipe; the line from Negley, Ohio, to Cook's Ferry, Pennsylvania, a distance of 13 miles (the latter place being the point at which delivery is made to the common carrier lines of the South West Pennsylvania Pipe Lines), consists of one eight-inch pipe. The total length of the petitioner's leased line from Negley, Ohio, to Centerbridge, Pennsylvania, is about 309 miles, of which at least 175 miles consist of a single pipe. It is apparent, therefore, that over large portions of petitioner's lines all grades of oil carried by it would have to pass through the same pipes. It is well settled that different grades of crude oil, when transported over considerable distances through the same pipes, mix to a substantial extent, and the mixture, for refining purposes, has a less value than the higher grade oil. If the petitioner, as carrier, were compelled to stand all the loss resulting from mixture, petitioner's damage from this cause might be very great; but even if the loss should be distributed among the shippers in proportion to the size of their shipments, still the loss resulting from such mixture would fall chiefly upon petitioner, inasmuch as petitioner itself would, at least for a time, necessarily remain the largest shipper through its own lines. Assuming that petitioner were required to carry sulphur-bearing oils in any considerable quantities for other shippers, in order to reduce the loss from contamination, it would be necessary to construct at least one more tank at each pumping station throughout the entire length of petitioner's owned and leased lines.

82

To increase the capacity of petitioner's pipe lines by a single pipe throughout the entire length of the system, and to add one tank and an additional pump at each pumping station, would cost not far from $5,000,000.

Deponent further says that portions of petitioner's pipe lines to the extent of about 6.7 miles and no more are laid upon rights of way of certain railroad companies. Deponent has caused a careful investigation to be made into the sources of title of those portions of the railroad rights of way upon which petitioner's pipe lines are laid, as above stated, and is advised by the attorneys making such examination that all such portions of said rights of way were acquired by the railroad companies in question either by direct grant evidenced by deed or to a very small extent thereof, by prescription, and in no case by condemnation proceedings. That deponent is not aware of any instance where the petitioner's pipe lines cross a street, since said pipe lines do not, to deponent's knowledge, pass through any towns. It is true that the pipe lines cross many roads, but permission to cross these roads was obtained by purchase or otherwise from the abutting owners and from the local authorities and not in any case from the State in which such pipe lines are situated, except in the one instance mentioned in the affidavit of Burr A. Towl; that deponent is advised and believes that title to all public highways in the States of Ohio, Illinois, and Indiana is in the adjoining owners, subject only to a right of way in the public.

Deponent denies that petitioner ships or transports crude oil produced or purchased and transported by it to the refineries or any of them of the Standard Oil Company, if thereby is meant the
83 Standard Oil Company of New Jersey; petitioner, however, does sell crude oil to said company and delivers it to said company at Centerbridge by petitioner's own pipe line and at other points by different common-carrier pipe lines. Deponent denies that the pipe lines of petitioner are in any sense whatsoever a transportation facility for the refineries of the Standard Oil Company or of any refineries whatsoever, or that such pipe lines have been or are a means of monopolizing crude oil by said refineries or by any refineries, or that by means of said pipe lines the refineries of the Standard Oil Company or any refineries, arbitrarily or otherwise, fix the prices of crude oil at points of production or delivery to the petitioner, or that such oil is purchased by petitioner for said or any refineries, or to be delivered direct to said refineries, or that said crude oil transported through the pipe lines of the petitioner is intended for or is the property of the Standard Oil Company or of any other company or person, except petitioner The Ohio Oil Company, down to the time of its delivery at the agreed delivery point, which is, as already stated, either at one of the terminals of the petitioner's pipe lines or at some point beyond petitioner's pipe lines to which the oil has been conveyed by a common-carrier pipe line employed and paid by the petitioner for that purpose.

Deponent avers that there are several companies which in no way were ever connected with the Standard Oil Company of New Jersey, or with any of the companies formerly affiliated with it, but which have pipe lines running into the Illinois field. Such companies include the Indian Refining Company, which has a pipe line from said field to Lawrenceville, Illinois; the Central Refining Company, which also has a refinery at Lawrenceville and a pipe line to that point from said field; the Sun Oil Company, which has a pipe line to Lawrenceville, where it is now constructing works; and the Rob-
inson Refining Company, of Robinson, Illinois, which has a
84 small pipe line into said field. In addition to the foregoing, the Tide Water Pipe Company also has a pipe line extending into said field and connecting with its pipe line to the Atlantic seaboard. All of said concerns are, deponent believes, entirely independent of the Standard Oil Company, or of any company ever affiliated with it.

Deponent denies that the petitioner is in the business of transporting crude oil, and avers that all such transportation carried on by it is incidental to its main business of producing, purchasing, and selling crude oil; and he denies that petitioner's said pipe lines are an adjunct or agency of any refineries; and he denies that the producers of crude oil in any of the fields reached by petitioner's pipe lines were or are unable to have their oil transported to competing re-

fineries or markets. Deponent denies that the petitioner (upon rates fixed or determined therefor), with or without many or any carriers, is sending shipments of crude oil through connecting pipe lines, or is delivering single or independent shipments to various or any stations or refineries, except that deponent avers, as aforesaid, that petitioner sells crude oil deliverable at agreed delivery points at net prices f. o. b. at such points, all charges up to such delivery points having been paid by petitioner.

Deponent denies that the petitioner has ever exercised or is now exercising or attempting to exercise any right to appropriate private property for public use, or that it has any such right, or that it uses or has used, under restrictions or limitations imposed by public officers, or otherwise, county or state roads, or the streets or alleys of the municipalities of the States of Ohio, Indiana, and Illinois, in the construction or maintenance of its pipe lines, reservoirs, tanks, or stations, except to the extent already hereinbefore set forth. Deponent again avers, as in the petition herein already averred, that the pipe line leased by the petitioner and crossing the State of Pennsylvania is used and always has been used by the petitioner solely for
85 the transportation of its own crude oil, the title to which, in no single instance, has ever passed until such oil reached the terminus of said pipe line; that said leased line was never used by any person or company other than petitioner; and deponent denies that the petitioner has ever used its pipe lines, whether leased or owned, to accomplish any illegal or unlawful purpose in placing unreasonable restrictions or limitations on interstate commerce or otherwise. Deponent denies that the principal business of petitioner is the transportation of oil by means of pipe lines, or that such transportation forms any part of petitioner's business, except an incidental part, in that the said pipe lines are used by the petitioner to carry its own oil from the point where the same is produced to the delivery point required by customers, or to common carrier lines over which it is to be further transported. Deponent denies that, in representing itself as dealing in and handling oil as its principal business, separate from the transportation thereof, petitioner is using any device, scheme, or arrangement in or by which the petitioner seeks to carry on the business of a common carrier and to avoid the statutes relating to common carriers by pipe lines, and, in support of this denial, deponent again avers that for a period of over seventeen years petitioner did a large business in producing and selling crude oil without the ownership of a single mile of pipe line, and that all its pipe lines have been built and extended from time to time in order to meet the needs of its own business and to get its own crude oil to markets or to delivery points agreed upon with its customers as aforesaid.

Deponent denies that, as alleged in the Answer of the United States of America herein, petitioner is now receiving, storing, transporting, or delivering all the varying grades and gravities of oil into its pipe

lines which it might be necessary for it to receive, store, transport, or deliver for other producers or shippers of oil, in the event that
86 petitioner was required to comply with the order of the Interstate Commerce Commission, which is sought to be enjoined. Deponent again avers that the petitioner does not admit and never did admit into its pipe lines any of the oils from the North Lima or South Lima or Indiana fields, any of which might easily be tendered to it, if petitioner were adjudged to be a common carrier.

Deponent denies that the petitioner is operating jointly or in concert or in any other way with the National Transit Company or with the Standard Oil Company of New Jersey, or is thus or thereby combining the business of producing and purchasing crude oil and the sale thereof with the business of transporting the same in interstate commerce, or that there results from any such arrangement, or that there exists on the part of petitioner, a natural or any tendency to prefer or discriminate; and deponent denies that petitioner, by anything done or omitted to be done by it, is enabled effectively to, or that it does effectively or otherwise, control the production or sale of crude oil or the transportation eastward thereof from the Illinois, Indiana, or Ohio fields, to the great or any prejudice or disadvantage of the other producers of crude oil in the said fields, or at all; and deponent denies that the said other producers in said fields are without any outlet or market for their said product, except through the petitioner herein, alone or acting jointly or in concert with said National Transit Company or Standard Oil Company of New Jersey (and deponent denies that the petitioner does act jointly or in concert with either of said companies for any purpose whatsoever); and deponent, in this connection, again calls attention to the fact already averred that upwards of 18,000 barrels of crude oil per day in the Illinois field are sold to other purchasers than the petitioner. Deponent denies that the petitioner is enabled to or does compel producers in the Illinois, Indiana, or Ohio fields, or any of them, to sell crude oil produced by them to petitioner as a pipe-line company or otherwise
87 at such prices as petitioner or as the said National Transit Company or Standard Oil Company of New Jersey may dictate, or upon such terms as they or either of them may impose; and deponent again avers that the prices at which crude oil is sold to petitioner are the result of supply and demand and of the competition between all the purchasers in the said fields. Deponent denies that petitioner is making, has made, or will continue to make any unjust discrimination in favor of or against any communities in the oil fields in the said States of Illinois, Indiana, and Ohio, or has done anything to the prejudice or disadvantage of any producers or shippers of oil, in comparison with any other producers or shippers thereof.

Deponent denies that the pipe lines of petitioner, whether owned or leased, in connection with pipe lines belonging to any other persons or corporations, form part of any continuous network or system

of pipe lines in the States mentioned in the answer of the respondent United States of America herein, or that petitioner's said lines form part of any system of pipe lines, as that word is used in said answer; but, on the contrary, deponent avers that petitioner's pipe lines are used solely for the transportation of petitioner's own oil in connection with the transaction of petitioner's own business and are entirely independent of any other pipe lines whatsoever; deponent denies that petitioner's said pipe lines, whether owned or leased, are in any sense a part of the pipe lines of the National Transit Company or of the Standard Oil Company of New Jersey; deponent denies that any portion of petitioner's pipe lines connects with pipe lines belonging to the National Transit Company or that any portion of petitioner's said lines is operated in conjunction with the pipe lines of the said National Transit Company or with any section of the pipe lines of the Standard Oil Company of New Jersey; deponent denies that petitioner's pipe lines, together with the pipe lines of the National Transit Company or Standard Oil Company of New Jersey, constitute a continuous or unbroken pipe line from the Illinois,
88 Indiana, or Ohio fields to New York Harbor or Baltimore, or that crude oil is transported in interstate commerce by said three companies in conjunction or by petitioner at all from said fields to said points; deponent denies that the Standard Oil Company of New York and the Standard Oil Company of New Jersey are, or that either of them is, the exclusive patrons or patron of the petitioner for any purpose. Deponent denies that producers and sellers of crude oil without pipe lines have no alternative but to sell their crude oil to producers or purchasers of crude oil who own or operate pipe lines, at such prices as the latter may dictate or upon such terms and conditions as they may impose, or otherwise.

From 1899 until December 1st, 1911, the capital stock of The Ohio Oil Company was owned and held by the Standard Oil Company of New Jersey. During all that time, however, The Ohio Oil Company retained its corporate franchise, maintained its corporate organization, and managed its own affairs through its own directors and officers. It was a defendant in the case of United States vs. Standard Oil Company and others; and, on December 1st, 1911, in obedience to the final decree in that case, its capital stock was distributed by the Standard Oil Company of New Jersey, pro rata, among its stockholders. The Ohio Oil Company now has an entirely separate board of directors and officers and is in all respects a separate and distinct corporation and absolutely independent.

JAMES C. DONNELL.

Subscribed and sworn to before me this 18th day of October, 1912.
[SEAL.] WALTER F. LIVINGSTON,
Notary Public, Kings County.
Certificate filed in New York County.

89 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER, *against* UNITED STATES OF AMERICA, RESPONDENT, and the INTERSTATE COMMERCE COMMISSION, INTERVENING respondent.	No. 78.

STATE OF NEW YORK, *county of New York, ss:*

F. EUGENE HURLEY, being duly sworn, says: That he is the secretary of the petitioner, The Ohio Oil Company; that he is an attorney at law and has been a member of the bar of the State of New Ohio for six years. That in the year 1911 the legislature of Ohio passed an act which is set forth in the laws of Ohio for the year 1911, section 40, pages 230–231, and which reads in part as follows:

"That any person or persons, firm or firms, corpartnership or voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated; * * *

"When engaged in the business of transporting natural gas or oil through pipes or tubing, either wholly or partially within this State, is a pipe-line company."

Thereafter and on June 11th, 1911, the tax commission of said State brought a proceeding to compel The Ohio Oil Company
90 to submit to the jurisdiction of the commission, on the ground that said The Ohio Company was a pipe-line company and therefore subject to taxation under said act of 1911. In said proceeding, The Ohio Oil Company answered, denying that it was a pipe-line company, and, after hearing argument and upon due consideration, said tax commission made the following ruling:

"COLUMBUS, OHIO, *July 10th, 1911.*

THE OHIO OIL COMPANY, R. J. BERRY, *Manager,*
Findlay, Ohio.

GENTLEMEN: You are advised that the commission has ruled that your company is not a pipe-line company, as defined by the act of May 31st, 1911, and that your company does not come under the jurisdiction of the tax commission in the way of assessment of its property. You are, therefore, requested to report to the various county auditors your taxable personal and real property located in each county in the State for assessment. Blanks for this purpose may be procured upon application to the county auditor.

Very respectfully,

THE TAX COMMISSION OF OHIO,
By R. M. DITTY, *Chairman.*

That annexed hereto, marked "Exhibit A," is a copy of the original articles of incorporation of the said The Ohio Oil Company.

That said articles of incorporation were amended in December, 1890, but no material change was made therein, except in section third, which, as amended, reads as follows:

"Third. The said corporation is formed for the purpose of
91 boring, drilling, mining, and operating for the production of oil and gas; of producing, buying, selling, marketing, and disposing of oil and gas and their various products; of piping or otherwise transporting, and of storing oil and gas when produced, owned, or acquired by it; of refining and manufacturing oil and its various products; and of purchasing, leasing, acquiring, holding and disposing of such real and personal estate as may be necessary and convenient for the carrying on of its said business."

F. EUGENE HURLEY.

Subscribed and sworn to before me this 18th day of October, 1912.
[SEAL.] WALTER F. LIVINGSTON,
Notary Public, Kings County.

Certificate filed in New York County.

92 *Exhibit A.*

THESE ARTICLES OF INCORPORATION OF THE OHIO OIL COMPANY.

Witness: That we, the undersigned, a majority of whom are citizens of the State of Ohio, desiring to form a corporation for profit, under the general corporation laws of said State do hereby certify:

First. That the name of said corporation shall be The Ohio Oil Company.

Second. Said corporation is to be located at Lima, Allen County, Ohio, and its principal business there transacted.

Third. Said corporation is formed for the purpose of drilling for and producing petroleum or mineral oil and piping or otherwise transporting and storing the same where produced or owned by it; and for the purpose of refining and manufacturing such oil and its various products, and shipping, selling, and marketing the same and buying and selling such oil and its products, together with the right to acquire by purchase, lease, or otherwise oil lands and all other property necessary for the carrying out of the objects of its incorporation.

Fourth. The capital stock of said corporation shall be one million dollars ($1,000,000) divided into ten thousand (10,000) shares of one hundred dollars ($100.00) each.

In witness whereof we have hereunto set our hands this thirtieth (30) day of July, A. D. 1887.

W. H. MANDEVILLE.
C. G. GOSS.
JAMES MCCORMICK,
SAM'L M. JONES.
J. C. LINEMAN.

93 THE STATE OF OHIO,
Allen County, ss.:

Personally appeared before me, the undersigned, a notary public in and for said county this 30th day of July, 1887, the above named W. H. Mandeville, C. G. Goss, James McCormick, J. C. Lineman and Samuel M. Jones, who each severally acknowledged the signing of the foregoing articles of incorporation to be his free act and deed for the uses and purposes therein mentioned.

Witness my hand and seal the day and year last above written.

[SEAL.] HERBERT L. BRICE,
Notary Public, Allen Co., O.

94 In the United States Commerce Court.

THE OHIO COAL COMPANY, PETITIONER,
against
UNITED STATES OF AMERICA, RESPONDENT, AND THE Interstate Commerce Commission, intervening respondent. } No. 78.

STATE OF PENNSYLVANIA,
County of Venango, ss.:

ERNEST E. COLLING, being duly sworn, deposes and says: That he resides at Oil City, Pennsylvania; that during the year 1906, he was employed in obtaining rights of way for the pipe line of The Ohio Oil Company, extending from Preble, Indiana, to Martinsville, Illinois, and was subsequently employed in obtaining rights of way for that part of the pipe line of The Ohio Oil Company which extends from Martinsville to Wood River, Illinois. That deponent did obtain or have charge of the obtaining of such rights of way for said pipe line for the entire distance from Preble to Wood River. That no part of the right of way for said pipe line for the said distance from Preble to Wood River was obtained by condemnation proceedings or by the use of any right of eminent domain; but that, on the contrary, the right of way for the entire distance was secured by private purchase or grant from the owners of the land
95 through which the pipe line has since been laid with the exception of a few miles of the distance, for which length the pipe line was laid on railroad rights of way, permission to use which was obtained from the railroads owning such rights of way.

ERNEST E. COLLING.

Subscribed and sworn to before me this 16th day of October, 1912.

[SEAL.] T. L. BLAIR,
Notary Public.

My commission is dated January 31, 1912, and expires at the end of the next session of the Senate.

In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER, *against* UNITED STATES OF AMERICA, RESPONDENT, AND THE Interstate Commerce Commission, intervening respondent.	No. 78.

STATE OF NEW YORK,
County of New York, ss.:

BURR A. TOWL, being duly sworn, deposes and says: That he resides at Cranford, New Jersey; that in the year 1907, he was employed in procuring rights of way for the pipe line of The Ohio Oil Company from Bluffton, Indiana, to Negley, Ohio; that in the following year he was employed in obtaining rights of way
96 for the pipe line of the Tuscarora Oil Company (Limited), since leased to The Ohio Oil Company, which extended from Negley, Ohio, to Centerbridge, Pennsylvania. That deponent personally handled all the papers relating to the grants of such rights of way throughout the entire distances named and can state positively of his own knowledge that no part whatever of such rights of way (which are those upon which the entire owned line of The Ohio Oil Company from Bluffton to Negley, and its leased line from Negley to Centerbridge were subsequently and are now laid) was obtained by condemnation proceedings or by any use of the right of eminent domain or by any other way than by private purchase and grant. That no consent was obtained for any purpose from the authorities of any State through which said rights of way were procured by deponent, except in one instance in the State of Pennsylvania, where consent was obtained from the State highway commissioners to disturb the surface of a State road for the purpose of crossing the same. In this instance the only obligation imposed by the consent related to the proper performance of the work and to restoring the surface of the road to its former state and similar conditions, all of which were fully and properly performed.

That for a distance of about one-quarter of a mile in the State of Ohio the said pipe line was laid on the right of way of the Erie Railroad Company, and, in one instance, for about the same distance in the State of Pennsylvania, the pipe line was laid on the right of way of the Pennsylvania Railroad Company.

(Sd) BURR A. TOWL.

Subscribed and sworn to before me this 16th day of October, 1912.

[SEAL.] WALTER F. LIVINGSTON,
Notary Public, Kings County.

Certificate filed in New York County.
My commission expires March 30th, 1913.

97 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
against
UNITED STATES OF AMERICA, RESPONDENT, AND THE INTERSTATE COMMERCE COMMISSION, intervening respondent. } No. 78.

STATE OF NEW YORK,
County of New York, ss:

FORREST M. TOWL, being duly sworn, says: I reside in the borough of Brooklyn, city of New York. I am a civil engineer by profession, holding that degree from Cornell University. I have made a specialty of pipe-line engineering for over twenty-five years. I have built a number of pipe lines and have overseen their operation, and am very familiar with all the problems which arise in the practical construction and operation of pipe lines. Prior to December, 1911, I was consulting engineer for The Ohio Oil Company, and I personally superintended the construction of a large part of its now existing pipe lines, both those owned by it and that leased by it, crossing the State of Pennsylvania. A large portion of the pipe lines of said company, from the westerly terminus at Wood River, Illinois, to the easterly terminus at Centerbridge, Pennsylvania, to wit, 311.52 miles, consists of a single pipe line. This does not take into
98 account any branch line. Other portions consist of two or more pipes of varying capacities, depending upon the character of the country which is being crossed. I have had occasion to make repeated tests to determine the fact and the degree of mixing resulting from the transportation of crude oils of different grades or constituent qualities through the same pipes. Wherever oils so differing are transported through a single pipe an amount of mixture takes place at every point where the different kinds of oil come in contact, which amount of mixture is proportionate to the distance that the oil is transported; that is to say, the farther the oil is carried the larger the amount of mixture becomes. If, for example, a batch of so-called Pennsylvania crude oil having a gravity of, say, 44 degrees, were interposed between two batches of Mid-Continent crude oil, having an average gravity of 32 degrees, there would be a mixture at each end of the column of Pennsylvania crude oil. This mixture would be a certain amount for the first mile or the first hundred miles and would increase in the ratio of the distance traversed. It is also a fact that portions of the pipe line of The Ohio Oil Company are made up of a plurality of pipes. Especially where, as frequently happens, the parallel pipes are of different diameters it is a well-known fact that the columns of oil move through the different parallel pipes with different degrees of speed; so that, where the parallel pipes unite at some point where a single pipe is employed, or a less number of parallel pipes, there will be a considerable additional amount of mixture, owing to the uneven rate at which the col-

umns of oil have passed through the parallel pipes. From these causes and other causes which are well known to pipe-line engineers, I am able to state with positiveness that to transport crude oils of substantially different grades or qualities through the pipe-line system of The Ohio Oil Company must inevitably result in a large amount of mixture between the two kinds of crude oil. In the case assumed of a batch of high-grade Pennsylvania crude oil
99 included between two batches of low gravity Mid-Continent crude oil, the amount of mixture at the two ends of the column of Pennsylvania crude oil, if carried from Bluffton, Illinois, to Centerbridge, Pennsylvania, through the pipe lines of the oil company, might easily amount to 12,000 barrels. I make this statement from my knowledge and experience as a pipe-line engineer and as the result of a great number of tests and observations in regard to the mixture of crude oils in pipe lines and the resulting contamination.

I can state of my own knowledge that refiners are constantly complaining of the mixtures of the two grades of crude oil. They claim that the oil affected by the mixture is of no greater value than the value of the lower grade and they demand allowances on that basis. In the case of the mixture of Mid-Continent and Pennsylvania oil, where there is a difference in value of about 50 cents per barrel, the loss resulting from mixture, when the oil has been carried over a long distance in a line like that of The Ohio Oil Company, must necessarily be very large.

(Sd.) FORREST M. TOWL.

Subscribed and sworn to before me, this 16th day of October, 1912.

[SEAL.] GODFREY GOLDMARK,
Notary Public, New York County.

100 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,

against

UNITED STATES OF AMERICA, RESPONDENT, AND the Interstate Commerce Commission, intervening respondent.

No. 78.

STATE OF NEW YORK,
County of New York, ss:

WARD A. MILLER, being duly sworn, says: That he resides at Lima, Ohio; that he is superintendent of pipe lines of The Ohio Oil Company and has held that position for about four years past. That prior to said four years he was continuously employed as superin-

tendent of oil pipe lines or in other positions connected with the construction or management of oil pipe lines by various other companies since about 1888. That he has thus had upwards of twenty-four years' continuous practical experience with oil pipe lines, during which he has superintended the construction of many portions of such pipe lines. That he is very familiar with the transportation of oil through pipe lines in all its phases.

Deponent has made a large number of practical tests, both in the pipe lines of The Ohio Oil Company and in other oil pipe
101 lines, for the purpose of determining the amount of mixture which ensues when oils of different gravities are carried through the same pipes. During the whole period of deponent's connection with said The Ohio Oil Company, that company has transported through its pipe lines only two kinds of crude oil, both from the Illinois field, and known respectively as "sweet" and "sour" oil. These oils differ in their gravities by about 3 degrees. The so-called "sour" oil contains a small amount of sulphur. The Ohio Oil Company now transports about 300,000 barrels a month of this so-called Illinois "sour" oil, all the rest of the oil transported by it being the "sweet" oil. The "sour" oil is invariably moved in batches of about 300,000 barrels, that being the amount which experience has shown to be the best for reducing both the actual amount and the percentage of mixture and contamination. With a batch of 300,000 barrels of "sour" oil, preceded and followed by large batches of "sweet" oil, both from the Illinois field, and assuming all the oil to be transported as far as from Bluffton, Illinois, to Centerbridge, Pennsylvania, experience has shown that the amount of mixture resulting is about 3,000 barrels at each end of the column of "sour" oil, or a total of 6,000 barrels. When the amount of the "sour" batch is reduced, not only does the percentage of mixture increase, but also its actual amount; that is to say, if the batch of the "sour" oil, in the case supposed, were only 100,000 barrels, experience has shown that in the pipe lines of The Ohio Oil Company the total amount of mixture will considerably exceed 6,000 barrels, and if the batch of "sour" oil be reduced as low as 25,000 barrels, it would entirely disappear in the distance from Bluffton to Centerbridge; or, in other words, the whole amount would have become so mingled with the "sweet" oil as to be indistinguishable by any gravity test. Deponent states this as the result of numerous practical experiments with batches of crude oil of many different amounts, including one
or more experiments with batches of 25,000 barrels of the
102 so-called "sour" oil, when what deponent has stated actually took place; that is to say, it was impossible to recover any part of the crude oil contained in the small batch, except in the sense that it was present mingled with the other kind of oil.

The pipe lines of The Ohio Oil Company pass through the Lima-Indiana field, in eastern Indiana and northwestern Ohio. There is no reason why oil produced at various points in that field should not be tendered to The Ohio Oil Company for transportation, if the com-

pany should be required to act as a common carrier. All the oil produced in the Lima-Indiana field is strongly impregnated with sulphur, and none of it can be refined without the use of the special process with the apparatus for which only certain refineries are supplied. The same conditions as to amount of mixture as those stated would exist if batches of these Lima-Indiana oils had to be carried in the pipe lines of The Ohio Oil Company between batches of "sweet" oil, and the result might be very serious. As a matter of practical experience, refineries which are not equipped for the special process necessary in the refining of Lima-Indiana oils, and who have bought "sweet" oil, will not accept a mixture of the "sweet" crude oil and of the Lima-Indiana oils, because the sulphur in the mixture would make it useless to them for refining purposes. If the same concerns were shipping "sweet" oil through the pipe lines of The Ohio Oil Company, in juxtaposition with Lima-Indiana oils, there would inevitably be a shortage at the end of the route, part of the "sweet" oil having gone into mixture with the sulphur bearing oils, and that shortage would either fall all upon the owner of the pipe line, or, if under regulations, the loss from mixture were distributed in the ratio of the amounts of the shipments, then the larger part of the loss must still fall upon The Ohio Oil Company, since it would long continue as the largest shipper through its own pipe lines.

103 The pipe lines of The Ohio Oil Company extend to Preble, Indiana, to a point in near proximity to the pipe line of the Indiana Pipe Line Company, a common carrier. Should The Ohio Oil Company be compelled to act as a common carrier, there is no reason why shipments of Mid-Continent oils on their way eastward through the lines of the said Indiana Pipe Line Company should not be diverted at Preble and there tendered to The Ohio Oil Company for transportation to points along its lines. There would thus be introduced a third kind of crude oil, which refiners would wish to be kept separate, and the mixing of which with the other kinds of crude oil carried through the same pipes would further complicate the situation and increase the loss.

WARD A. MILLER.

Subscribed and sworn to before me this 18th day of October, 1912.

[SEAL.] HAROLD J. BAILY,
Notary Public, Kings County.

Certificate filed in New York County.

104 *Journal entries.*

No. 75.—The Prairie Oil & Gas Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 76.—The Uncle Sam Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 77.—Robert D. Benson et al., petitioners, vs. The United States of America, respondent; Interstate Commerce Commission et al., interveners.

No. 78.—The Ohio Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 79.—Standard Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 80.—Standard Oil Company of Louisiana, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

Proceedings of October 29, 1912.

It was announced by the court that these causes would be heard together. Thereupon all of said causes came on for
105 hearing upon the applications for a preliminary injunction and No. 75 upon the motion of the United States to dismiss, and the arguments of counsel were commenced, Mr. W. S. Fitzpatrick, Mr. W. I. Lewis, and Mr. John G. Milburn appearing on behalf of the petitioners.

Proceedings of October 30, 1912.

Thereupon all of said causes came on for further hearing upon the applications for a preliminary injunction and No. 75 for further hearing upon the motion of the United States to dismiss, and the arguments of counsel were continued, Mr. John G. Milburn appearing on behalf of the petitioners, Mr. Albert L. Wilson on behalf of the Uncle Sam Oil Company, petitioner in No. 76; Mr. Blackburn Esterline on behalf of the United States, and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

Proceedings of October 31, 1912.

Thereupon all of said causes came on for further hearing upon the applications for a preliminary injunction and No. 75 for further hearing upon the motion of the United States to dismiss, and the arguments of counsel were concluded, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission, Mr. Winfred T. Denison, Assistant Attorney General, on behalf of the United States, and Mr. John G. Milburn on behalf of the petitioners. Thereupon counsel for the United States was granted leave to file an affidavit, said affidavit to be first submitted to Mr. Milburn.
106 Mr. Milburn, of counsel for the petitioners, was granted leave to file a brief on monopoly within one week, and opposing counsel were given one week thereafter in which to file briefs in reply. Thereupon said causes were taken under advisement by the court.

107 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
against
THE UNITED STATES OF AMERICA, RESPONDENT, and the Interstate Commerce Commission, intervening respondent. | In Equity, No. 78.

Separate petition of intervention by the Cornplanter Refining Company. Filed November 5, 1912.

To the honorable judges of said court:

Your intervener, the Cornplanter Refining Company, humbly complaining against plaintiff and having a material interest in the above cause, respectfully shows:

I.

That the Cornplanter Refining Company is a corporation duly authorized and existing under and by virtue of the laws of the State of Pennsylvania, with authority to produce, purchase, manufacture, and sell petroleum and the products thereof; that it is now,
108 and for a period of more than five years last past has been, engaged in said business by virtue of the authority aforesaid, and maintains and during said period has maintained its principal place of business in the city of Warren, State of Pennsylvania, and owns and operates a refinery thereat for the purpose of manufacturing and refining crude petroleum oil and selling and shipping the same; that it has in connection with its said refinery large tanks for the storage of crude oil which it uses in the operation of its said business, and that it owns real estate upon which it can construct further storage tanks; that it has pipe lines wholly within the State of Pennsylvania for the purpose of gathering oil from the producers at their wells and transporting the same to its said refinery; that it is unable, by means of such pipe lines as it owns, to secure in such producing fields a sufficient quantity of crude petroleum to supply the needs of its said business, and that it purchases and receives oil through the pipe lines of the National Transit Company, a common carrier pipe-line company, at its refinery, and that it is now compelled to purchase oil in other fields of production, particularly the Illinois field, and transport the same in tank cars to its refinery at great cost. Intervener is informed and believes, and therefore alleges, that petitioner, The Ohio Oil Company, is engaged in the business of purchasing, producing, and transporting crude petroleum oil in the States of Ohio, Indiana, and Illinois, and that it has pipe
109 lines in said States through which it gathers crude oil from the producers at their wells and delivers the same in and transports through the States aforesaid and the State of Pennsyl-

vania, and that petitioner has connection or can reasonably make connection with other common carrier pipe lines and through them can make deliveries of oil to intervener at its said refinery in the city of Warren, State of Pennsylvania, at a much less cost of transportation than intervener is charged when the same is transported by railroad; that intervener is able to purchase large quantities of crude petroleum in the State of Illinois and deliver such oil to the pipe lines of petitioner, The Ohio Oil Company, for transportation and delivery to intervener's refinery at Warren, Pennsylvania; that intervener has sufficient storage tanks in which to take reasonable quantities of oil and store the same for its use and is able to, and will, if necessary, provide further storage tanks for the purpose of taking delivery of such oil. Intervener is informed and believes, and therefore alleges, that the pipe lines belonging to and operated by petitioner, The Ohio Oil Company, extend from the fields of crude production in the State of Illinois and in the State of Indiana to Preble, Indiana; that they are there connected with the lines of the Indiana Pipe Line Company, a common carrier pipe-line company, which in turn are connected with the lines of the Buckeye Pipe Line Company, a common carrier pipe-line company, operating within and through the State of Ohio, the lines of which company are connected with the lines of the National Transit Company, a common carrier pipe-line company, having pipe lines and operating the same in the State of Pennsylvania, through which lines delivery of oil purchased by intervener in the Illinois field could at small cost be transported entirely by pipe line from said field to Warren, Pennsylvania.

110

II.

Intervener further alleges that the total production of crude petroleum, as shown in the last report of the Department of the Interior, for the year 1911, in the Appalachian field (which comprises the oil produced in the States of New York, Pennsylvania, West Virginia, eastern Ohio, and Kentucky) was 23,749,831 barrels; that said amount is nearly 3,000,000 barrels less than was produced in the preceding year; that in the Lima (Indiana) field (so called) the amount of crude petroleum produced for said year 1911 was 6,231,164 barrels, being over a million barrels less than was produced the preceding year; that in the Illinois field (so called) the amount of crude petroleum produced during the year 1911 was 31,317,038 barrels; that said amount was nearly 2,000,000 barrels less than was produced during the preceding year; that in the Mid-Continent field (so called), as shown in said report for the year 1911, the amount produced was 65,917,788 barrels, said amount being nearly 7,000,000 barrels in excess of that produced during the preceding year; that the average price at which the oil was sold by the producers at the wells was: For the Appalachian field, $1.30 per barrel; for the Lima (Indiana) field, 82 cents per barrel; for the

111

Illinois field, 63 cents per barrel; and for the Mid-Continent field, 48 cents per barrel; that it is necessary for intervener, on account of the diminishing amount of crude oil produced in the near-by fields of production and because of the high price of said oil at the wells, for it to purchase oils in other fields and have the same transported to its refinery at Warren, Pennsylvania.

III.

That the Interstate Commerce Commission, upon its own motion, instituted an inquiry entitled, "In the Matter of Pipe Lines, No. 4199," as follows, to wit:

"Interstate Commerce Commission.

"*Order.*

"At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of June, A. D. 1911.

"Present: Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar C. Clark, James S. Harlan, Charles C. McChord, Balthazar H. Meyer, commissioners.

"No. 4199.

"In the matter of pipe lines.

"Complaint being made to the commission that the carriers
112 hereinafter named, and each of them, have established certain rates, classifications, and regulations which were unjust and unreasonable, unduly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of the act to regulate commerce and acts amendatory thereof, and that the practices of said carriers, and each of them, in the conduct of business subject to said act are unjust, unreasonable, unduly discriminatory, unduly preferential, and otherwise in violation of the provisions of said act, and good cause appearing therefor,

"*It is ordered*, That an inquiry be, and the same is hereby, instituted in the above-mentioned matters by this commission, on its own motion, and that the rates, classifications, regulations, and practices of the various corporations and persons engaged in the transportation of oil and other commodities, except water and except natural and artificial gas, by means of pipe lines, or partly by pipe line and partly by railroad, or partly by pipe line and partly by water, subject to the act to regulate commerce and acts amendatory thereof, and each of them, to determine whether such rates, classifications, regulations, or practices, or any of them, are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial or otherwise in

violation of the provisions of said act, and to determine the manner and method in which the business of said corporations and persons and each of them is conducted.

"*It is further ordered*, That the following corporations and persons engaged in such transportation subject to said act to regulate commerce and acts amendatory thereof, be, and the same are hereby, made parties respondent to this proceeding, viz: The Buckeye
113 Pipe Line Company, The Columbia Pipe Line Company, The Crescent Pipe Line Company, Cumberland Pipe Line Company (Incorporated), Emery Pipe Line, The Eureka Pipe Line Company, Gulf Pipe Line Company, Gulf Pipe Line Company of Oklahoma, Higgins Oil & Fuel Company, Indiana Pipe Line Company, National Transit Company, New York Transit Company, Northern Pipe Line Company, Producers & Refiners Oil Company (Limited), Producers Oil Company (Limited), Pure Oil Company, South West Pennsylvania Pipe Lines, Southern Pipe Line Company, The Texas Company, United States Pipe Line Company, Acme Oil Company, Anchor Oil & Gas Company, Associated Pipe Line Company, Associated Oil Company, Central Oil Company of Los Angeles, Cornplanter Refining Company, Corsicana Refining Company, Daugherty & Son Refining Company, Evangeline Oil Company, Franklin Pipe Line Company, Guffey Petroleum Company, J. M., Industrial Pipe Line Company, Kansas Co-operative Refining Company, Kansas Crude Oil & Gas Company, Kansas Natural Gas, Oil & Pipe Line Improvement Company, Kasigan Oil, Gas & Power Company Manhattan Oil Company, The Modelo Oil Com-
114 pany, National Pipe Line Company, National Refining Company, The Ohio Oil Company, Paragon Refining Company, Prairie Oil & Gas Company, Puente Oil Company, Pure Oil Company, Rio Bravo Oil Company, Security Oil Company, Standard Oil Company of California, Standard Oil Company of Kansas, Standard Oil Company of Louisiana, Sun Company, Sun Pipe Line Company, Tide-Water Oil & Pipe Company, Tide-Water Pipe Company (Limited), Uncle Sam Oil Company, Uncle Sam Oil Company of Kansas, Union Oil Company of California, The Union Petroleum Company of Philadelphia, Union Pipe Line Company, Vacuum Oil Company, Wellsville Refining Company.

"A true copy.

[SEAL.]

"JUDSON C. CLEMENTS,
"*Chairman.*"

That intervener was duly served with an order to appear at certain hearings thereafter to be held by the Interstate Commerce Commission, at which certain testimony and other evidence was taken and considered by the commission; that on or about the 28th day of March, 1912, a further order was made upon respondents to appear before the said commission in the city of Washington,
115 D. C., on the 10th day of May, 1912, for the consideration and argument of certain questions of law by them propounded;

that, after due consideration of the evidence and arguments of counsel of the various respondents, the Interstate Commerce Commission rendered its opinion upon such questions of law, and thereupon, on the 3d day of June, 1912, made the following order, to wit:

"*Order.*

"At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3d day of June, A. D. 1912.

"No. 4199.

"In the matter of pipe lines.

"This proceeding having been instituted by the commission on its own motion, and investigation having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"*It is ordered*, That respondents, The Oklahoma Pipe Line Company, The Prairie Oil & Gas Company, Standard Oil Company of Louisiana, The Ohio Oil Company, Standard Oil Company of New Jersey, The Tide-Water Pipe Company (Limited), Pure Oil Company, Pure Oil Pipe Line Company, United States Pipe Line Company, Producers and Refiners Oil Company (Limited), The National Pipe Line Company, The Uncle Sam Oil Company, and The Uncle Sam Oil Company of Kansas be, and the same are hereby, notified and required to file with this commission, on or before the
116 1st day of September, 1912, schedules for their rates and charges for the transportation of oil, in compliance with the act to regulate commerce.

"By the commission.

[SEAL.] "JOHN H. MARBLE,
"*Secretary.*"

IV.

Intervener further alleges that the cost of transportation of crude oil by railroad from the fields of production to its refinery at Warren, Pennsylvania, is so great as to make the refining of oil thus transported unprofitable, and that the cost of transportation of crude oil by pipe line, allowing a reasonable profit to those engaged in such transportation, will not exceed 25 per cent of the cost of the transportation of the same by railroad.

V.

Intervener alleges that it is able to buy oil from the producers in all of the various fields of production, but that it is unable, unless petitioner, The Ohio Oil Company, will transport oil which intervener purchases in the Illinois field at reasonable rates in connection

with other pipe-line companies to its refinery at Warren, Pennsylvania, to otherwise transport such oil except at great cost by railroad, and that, on account of the reasons aforesaid, it is necessary, in order to successfully continue its said business, that intervener should buy oils from producers in the Illinois field and have the same transported by pipe line to its refinery at Warren, Pennsylvania.

117 Wherefore intervener prays that it may be made a separate party intervener hereto; that this honorable court will dismiss the bill of petitioner denying its prayer for injunction and leave it to the operation of law, as provided in the act to regulate commerce under the jurisdiction of the Interstate Commerce Commission in obedience to its lawful and just order, and for such other and further relief as may be in accordance with equity.

[CORPORATE SEAL.] THE CORNPLANTER REFINING COMPANY,
By J. C. GOAL, *Vice Pres't.*
W. F. MESSNER, *Sec'y.*

C. D. CHAMBERLIN,
Attorney for Intervener,
1017–1019 Rose Bldg., Cleveland, Ohio.

STATE OF PENNSYLVANIA, *County of Warren, ss:*

J. C. Goal, being first duly sworn, deposes and says that he is the vice president of the Cornplanter Refining Company, the above-named intervener; that he has read the foregoing petition and knows the contents thereof, and that the same is true except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true.

J. C. GOAL.

118 Sworn to before me this 29th day of October, A. D. 1912.

[Seal Clara M. Masterson, notary public, Warren, Pa.]

CLARA M. MASTERSON,
Notary Public.

My commission expires Feb. 21, 1915.

(Endorsed:) Filed United States Commerce Court November 5, 1912. G. F. Snyder, clerk.

119 *Motion of the Cornplanter Refining Company for leave to intervene separately. Filed November 5, 1912.*

In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER, *against* THE UNITED STATES OF AMERICA, RESPONDENT, AND The Interstate Commerce Commission, intervening respondent.	No. 78.

Now comes C. D. Chamberlin, attorney for and on behalf of the Cornplanter Refining Company, and moves the court to intervene in the above-entitled cause.

As cause for this motion it is shown:

(1) That a petition for injunction is filed under the provisions of the "Act to Regulate Commerce," approved February 4, 1887, and the various acts amendatory thereof and supplementary thereto, and the hearing and disposition of the cause will involve the construction of said acts or certain sections thereof in an order of the Interstate Commerce Commission entitled " In the Matter of Pipe Lines," made June 3rd, 1912.

(2) That the Cornplanter Refining Company is interested in said order and was a party respondent before the Interstate Commerce Commission.

(3) That the intervention is specifically authorized by section 5 of the act entitled "An Act to Create a Commerce Court," etc., approved June 18, 1910.

Intervener adopts the pleadings of the Interstate Commerce Commission herein.

C. D. CHAMBERLIN,
Attorney for The Cornplanter Refining Company.

120 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER, *v.* THE UNITED STATES OF AMERICA, RESPONDENT, AND Interstate Commerce Commission, intervening respondent.	No. 78.

Order of Intervention. Entered November 5, 1912.

The Cornplanter Refining Company, of Warren, Pennsylvania, having filed and presented their petition for intervention herein and it appearing to the court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered that the Cornplanter Refining Company be, and they are hereby, allowed to intervene and become parties intervener and to be heard by their counsel in all the proceedings had and taken in the above-entitled cause, the court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure as to the court shall seem wise and proper: *Provided*, That the granting of such leave to intervene shall not be construed to operate to delay decision upon the ap-

plication for a temporary restraining order now under advisement by the court.

By the court:

WILLIAM H. HUNT,
Judge.

121 In the United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
against
UNITED STATES OF AMERICA, RESPONDENT. } In Equity, No. 78.

Answer of the petitioner, The Ohio Oil Company, to the separate petition of intervention by The Cornplanter Refining Company. Filed February 3, 1913.

To the honorable the judges of the United States Commerce Court:

The answer of the petitioner, The Ohio Oil Company, to the separate petition of intervention by The Cornplanter Refining Company, respectfully shows:

I. Petitioner denies that the said intervener has a material interest in the above cause.

II. Petitioner admits that it is engaged in the business of producing and purchasing crude oil in the States of Ohio, Indiana, and Illinois and of selling the same, when produced or acquired and owned by it. It denies that it is engaged in the business of transporting crude petroleum oil in the States of Ohio, Indiana, and Illinois, or elsewhere, or that it transports, or has ever transported, such oil for any other person, firm, or corporation, or at all, except that it has transported and does transport its own crude oil
122 through its own private pipe lines, as an incident to its business. It admits that it has certain pipe lines in the said States, but avers that they are used and have always been used merely as a facility for the transportation of petitioner's own oil in the conduct of its own business.

III. Upon information and belief, petitioner denies that the cost of transportation of crude oil by railroad from the fields of production to the intervener's refinery at Warren, Pennsylvania, is so great as to make the refining of oil thus transported unprofitable, and petitioner denies that the cost of transportation of crude oil by pipe line, allowing a reasonable profit to those engaged in such transportation, will not exceed twenty-five per cent of the cost of the transportation of the same by railroad.

IV. Petitioner denies that it has any knowledge or information sufficient to form a belief as to whether the intervener is able to buy oil from producers in any or all of the various fields of production, and petitioner denies each and every other averment contained in Paragraph V of the said petition of intervention.

Wherefore petitioner prays for judgment dismissing the said petition of intervention, and for such other and further relief as may be just and agreeable to equity.

And, as in duty bound, your petitioner will ever pray, &c.

THE OHIO OIL COMPANY,
(Sd.) By JAMES C. DONNELL.
CARTER, LEDYARD & MILBURN,
Solicitors for Petitioner, 54 Wall Street, New York, N. Y.
JOHN G. MILBURN,
FRANK L. CRAWFORD, *Of Counsel.*

123 UNITED STATES OF AMERICA,
Northern District of Ohio, State of Ohio,
County of Hancock, ss:

Personally appeared before me, ——— ———, a notary public in and for the aforesaid county, James C. Donnell, who, being first duly sworn, deposes and says:

That he is the president of The Ohio Oil Company, the petitioner above named; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that, as to those matters, he believes it to be true.

(Sd.) JAMES C. DONNELL.

Subscribed and sworn to before me this 29th day of January, in the year 1913.

In witness whereof, I have hereunto signed my name and affixed my notarial seal, this 29th day of January, 1913.

[L. S.] (Sd.) D. T. KAGYS,
Notary Public.

United States Commerce Court.

OCTOBER SESSION, 1912.

THE PRAIRIE OIL AND GAS COMPANY, petitioner, *v.* THE UNITED STATES OF AMERICA, respondent; Interstate Commerce Commission, intervener.	No. 75.
THE UNCLE SAM OIL COMPANY, petitioner, *v.* SAME.	No. 76.
ROBERT D. BENSON ET AL., petitioners, *v.* SAME.	No. 77.
THE OHIO OIL COMPANY, petitioner, *v.* SAME.	No. 78.
STANDARD OIL COMPANY, petitioner, *v.* SAME.	No. 79.
STANDARD OIL COMPANY OF LOUISIANA, petitioner, *v.* SAME.	No. 80.

74150—13——1

ON MOTIONS FOR PRELIMINARY INJUNCTIONS.

(For opinion of the Interstate Commerce Commission see 24 I. C. C. Rep., —.)

Mr. W. S. Fitzpatrick, with whom *Mr. J. B. F. Cates*, *Mr. L. W. Keplinger*, and *Mr. C. W. Trickett* were on the brief, for the Prairie Oil and Gas Company.

Mr. Albert L. Wilson for the Uncle Sam Oil Company.

Mr. W. I. Lewis, with whom *Mr. Arch. F. Jones*, *Mr. R. R. Lewis*, and *Mr. Clarence A. Farnum* were on the brief, for the Tide-Water Pipe Company, Limited.

Mr. John G. Milburn, with whom *Mr. Frank L. Crawford* and *Mr. Walter F. Taylor* were on the brief, for the Ohio Oil Company.

Mr. John G. Milburn, with whom *Mr. M. F. Elliott* and *Mr. Chester O. Swain* were on the brief, for Standard Oil Company and Standard Oil Company of Louisiana.

Mr. Winfred T. Denison, Assistant Attorney General, with whom *Mr. Thurlow M. Gordon*, special assistant to the Attorney General, was on the brief, and *Mr. Blackburn Esterline*, special assistant to the Attorney General, for the United States.

Mr. Charles W. Needham for the Interstate Commerce Commission.

Before Knapp, presiding judge, and Hunt, Carland, and Mack, judges.

March 11, 1913.

KNAPP, *Presiding Judge:*

By an amendment approved June 29, 1906, which took effect sixty days thereafter, the provisions of the act to regulate commerce were extended and made to apply "*to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water,* * * * *who shall be considered and held to be common carriers within the meaning and purpose of this act* * * *."

Subsequently, in June, 1911, the Interstate Commerce Commission on its own motion instituted a proceeding, "In the Matter of Pipe Lines," No. 4199, to which numerous companies using pipe lines for the transportation of oil, including the several petitioners above named, were made parties respondent. The stated purpose of this inquiry was to determine whether any of the rates, regulations, or practices of the respondents, or either of them, were unreasonable or discriminatory, or otherwise in violation of the act, and to ascertain the manner and method in which their business was carried on, matters respecting which, as the order recites, complaint had been made to the Commission.

During the following months an extended investigation appears to have been conducted, which presumably disclosed, among other things, the principal facts relating to the location, extent, ownership,

and activities of the various pipe lines of the respondent companies. After the taking of testimony was concluded, and in the order or notice fixing May 10, 1912, as the date for final hearing, certain questions of law were propounded by the Commission, and it is assumed that these questions were discussed when the matter was argued and submitted. Afterwards, and on June 3, 1912, the Commission made and filed its report of the proceeding, as required by law, and thereupon entered an order in and by which 13 of the respondents therein specified, including the above-named petitioners, were notified and required "to file with this Commission, on or before the 1st day of September, 1912, schedules of their rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce." (The effective date was subsequently postponed for a period which has not yet expired.)

Shortly thereafter the above-entitled suits were brought to set aside and annul this order, the several petitioners basing their right to such relief upon grounds which will presently be stated. The United States filed an answer to each suit, but later withdrew its answer in No. 75, *The Prairie Oil and Gas Company case*, and substituted a motion to dismiss for want of equity. In No. 77 the Wellsville Refining Company intervened by leave of the court and prayed that the petition be dismissed, and in No. 78 there was a like intervention by the Cornplanter Refining Company. The Interstate Commerce Commission

answered at length in each of the cases. Upon the verified petitions filed by them, respectively, and supporting affidavits the petitioners applied for injunctions *pendente lite*, and the cases have been argued and submitted on such applications.

Whilst each case differs from the others in various particulars, and perhaps in respects which would be important in other connections, the fundamental questions here involved are common to them all and arise out of facts which are practically undisputed.

The crude or natural oil produced in the United States is found in various sections of the country, described as "fields," which are of comparatively limited area and located at considerable distances from each other. The most important of these appear to be the Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, southeastern Ohio, Kentucky, and Tennessee; the Lima-Indiana and Illinois fields, covering parts of northwestern Ohio, Indiana, and Illinois; the mid-continent field, covering parts of the States of Kansas and Oklahoma; the Gulf field, covering parts of the States of Louisiana and Texas; the Caddo field in Louisiana and Texas, and other fields in the States of California, Colorado, Wyoming, Michigan, and Missouri. In each of these fields there are hundreds and perhaps thousands of wells from which the crude oil is obtained, and the aggregate output amounts to upward of two hundred millions of barrels per annum. The oil in its natural state is not well suited to domestic use, and therefore requires a process of refining

to prepare it for the needs of consumers. It is inferable from the record that the business of refining crude oil can be profitably conducted only on a large scale and by means of somewhat costly plants, and therefore the number of refineries is comparatively small. These refineries are located for the most part at considerable distances, and sometimes at great distances, from the fields of production, and the customary method of transporting the crude oil to the refinery is by means of pipe lines. The cost of transporting by this method is said to be not more than 25 to 35 per cent of the cost by any other agency, and it results that practically all the crude oil produced is moved by pipe lines to the various refineries. There are many thousands of miles of pipe lines now in use, and their operations are correspondingly extensive. Some of these pipe lines, aggregating a large mileage, are admittedly subject to public regulation, because their owners are public service corporations engaged in the business of common carriers; but many of them belong to private companies, which use them only in the conduct of their private business. The private lines in most instances are owned or controlled by the refineries to which they transport crude oil and which they exclusively serve. The construction of pipe lines, such as are owned by these petitioners, involves a large outlay of capital, and few producers of the crude article are able to provide themselves with such a facility for marketing their output. Consequently, and because the cost of railroad transportation is prohibitive, the great

majority of oil producers find it to their interest to sell at the wells to the owners of pipe lines, and, as a practical matter, may have no other alternative. For this reason it comes to pass that these private pipe-line companies transport not only the oil supplied by their own wells, but also the much greater amount purchased by them from other producers.

In the view we take of the questions involved in this controversy, and the grounds upon which we rest our decision, it is deemed unnecessary to describe the pipe-line industry in greater detail or to add anything more in this connection than a brief statement respecting the several petitioners.

The Prairie Oil and Gas Company is a corporation organized in 1900 under the laws of the State of Kansas. It owns and operates a system of pipe lines consisting of gathering lines in the mid-continent field, in the States of Kansas and Oklahoma, a trunk line from that field to Griffith in the State of Indiana, where it connects with the Indiana pipe line, and a trunk line in the State of Arkansas, connecting the Oklahoma pipe line with the pipe line of the Standard Oil Company of Louisiana. This company has no refinery, and its business is confined to producing, purchasing, and selling crude oil, which it delivers to its customers by means of the pipe lines described. Its own wells yield only about 12,000 barrels per day and it purchases approximately 70,000 barrels per day on the average. Its trunk lines are about 860 miles in length, of which some 300 miles are located on the right of way of the Atchison, Topeka &

Santa Fe Railway Company under contract arrangement with that company.

The Uncle Sam Oil Company is a corporation organized in 1905 under the laws of the State (then Territory) of Arizona. It owns and operates a pipe line from its wells in the State of Oklahoma to its refinery at Cherryvale, Kans. The extent to which this company purchases oil from other producers, if it engages in that business at all, does not appear from the record.

Robert D. Benson et al. are the members of a partnership, organized in 1878 for the term of 20 years and reorganized in 1898 for a further term of 20 years, in compliance with the laws of the State of Pennsylvania, and doing business under the name of the Tide-Water Pipe Co. (Ltd.). This company transports oil from the Appalachian field in the western part of Pennsylvania, and also oil received through connecting lines from other fields, to the Tide-Water Oil Co. refinery at Bayonne, in the State of New Jersey. It also owns and operates branch lines in New York and Pennsylvania, and a line extending from Stoy, Ill., through the States of Illinois, Indiana, Ohio, and Pennsylvania. The greater part of the crude oil transported by this company is purchased from other producers. The lines which it owns and the Bayonne refinery which it serves are under common or unified control.

The Ohio Oil Co. is a corporation organized in 1887 under the laws of the State of Ohio. It owns and operates pipe lines in the States of Ohio, Indiana,

and Illinois, and also leases and operates a line from Negley, Ohio, to Centerbridge, in the State of Pennsylvania. It is an extensive purchaser of crude oil from other producers.

Standard Oil Company, designated, for convenience, "Standard Oil Company of New Jersey," is a corporation organized in 1882 under the laws of the State of New Jersey, and its principal pipe lines are the following: (*a*) A line extending from Unionville, in the State of New York, near the boundary line of New Jersey, through the latter State to its refineries at Bayonne; (*b*) a line from Centerbridge, in the State of Pennsylvania, near the boundary of New Jersey, through the latter State to its refineries at Bayonne and Bayway; and (*c*) a line from Fawn Grove, in the State of Pennsylvania, near the boundary of Maryland, through the latter State to its refinery at Baltimore. The record indicates that much the greater part of the oil transported through these lines, and perhaps all of it, is oil which this company has purchased.

The Standard Oil Company of Louisiana is a corporation organized in 1909 under the laws of that State. It owns and operates a refinery at Baton Rouge and a trunk line extending thereto from the town of Ida, near the northern line of Louisiana, and also gathering lines in the Caddo field, in the States of Louisiana and Texas. It purchases a considerable part of the crude oil which its lines transport.

None of the petitioning corporations is organized or derives any of its corporate powers from laws of

the State of its creation under which common carrier or other public service corporations are organized, but each of them was formed and has always conducted its operations under and in compliance with State laws which relate to private as distinguished from public business. With certain alleged exceptions, which will be hereafter noticed, it is not claimed that either of the petitioners is under any statutory or legal obligation, other than the amendment in question, to perform the duties or otherwise act in the capacity of a common carrier. None of the petitioners possesses the right of eminent domain or has acquired any part of its property or rights of way by condemnation; nor has either of them received a franchise from any State, municipal, or local government, though each of them has in many instances laid its pipe lines across or along public streets and highways by permission or consent of the local authorities. None of them has ever held itself out as a common carrier or in fact carried oil for others, but each of them has carried only such oil as it produced from its own wells or purchased from other producers, and which it owned when the transportation took place. The pipe lines of petitioners are laid on private rights of way secured by purchase or lease, except that some of them for short distances, and one of them for a distance of some 300 miles, are laid upon and along the rights of way of certain railroads under some contract arrangement with such railroads. In short, so far as their legal status is fixed by the laws of the States

of their creation, and so far as their acts and attitude could make them such, all the petitioners carry on a private business, at least in the sense that they transport only their own oil and have always refused to transport for others; and all of them have evidently sought and claimed to so conduct their operations as to avoid any public activity which might subject them to public regulation. Some other facts relating to certain of the petitioners will be referred to in the following discussion of the legal questions to be decided.

The petitioners rely upon two propositions:

1. That the amendment of 1906 applies only to such pipe-line companies as were common carriers when the amendment was adopted or should thereafter become such by voluntary action or be so declared in some judicial proceeding; and, consequently, that as to these petitioners the order in question should be set aside because they are not and never have been common carriers and therefore are not subject to the provisions of the act or the authority of the Commission.

2. That if the amendment applies literally to all persons and corporations using pipe lines for the interstate transportation of oil, and Congress has thereby undertaken to bring within the scope of the act persons and corporations owning private pipe lines used solely for transporting their own oil in the conduct of their private business, the amendment is unconstitutional because it deprives such persons and corporations of their property without due

process of law and takes their property for public use without just compensation, and the order should be set aside for that reason.

We shall not attempt to review at length the argument by which the first proposition is supported but merely outline the reasons advanced for giving to the amendment a restricted application. Among other things it is said that the entire scope and aim of the act is the regulation of the charges and practices of common carriers; that its provisions are designed and adapted to that purpose and are not suited to a different purpose; that the intention to bring within such a law persons and corporations carrying on a private business should not be imputed to Congress if the amendment is reasonably susceptible of a construction in harmony with the other provisions of the regulating statute; and that the language of the amendment justifies such a construction.

In this connection it is argued that the words "engaged in transportation" are equivalent to and mean "engaged in the *business* of transportation"; that this indicates a calling or occupation which is followed for hire, implying transactions and relations between two or more persons, and does not embrace that which one does for himself and by himself alone. It would seem to follow from this interpretation, and the petitioners so contend, that the concluding phrase of the amendment, "who shall be considered and held to be common carriers within the meaning and purpose of this act," limits the preceding declaration

respecting the users of pipe lines, and operates to confine the amendment to such persons and corporations as are in fact common carriers or may be adjudged to be such by a court of competent jurisdiction. Stress is also laid upon the word "transportation," which later in the first section is given a broad definition, including "all instrumentalities and facilities of shipment or carriage, * * * and all services in connection with the receipt, delivery, * * * storage, and handling of property transported," terms which are claimed to relate exclusively to the functions of common carriers and to have no application to those who transport only their own property in the conduct of their private business.

These considerations are sought to be fortified by invoking the familiar principle that where a statute permits of two constructions, one of which involves serious questions of constitutional power and right, while the other would be free from constitutional objection, the latter should be adopted. Numerous cases illustrating and enforcing this principle are brought to our attention, of which one of the latest is the well known "Commodities Case," *United States* v. *Delaware & Hudson Company* (213 U. S., 366). Upon these authorities the contention is earnestly pressed that the amendment should be held to apply to only such pipe-line companies as are or may be adjudged to be common carriers, because the broader construction upon which the Government insists, and which would in effect extend the amendment without limitation or qualification to all persons and corpora-

tions engaged in the interstate transportation of oil by means of pipe lines, including those who use this means solely for transporting their own oil over their privately acquired rights of way, necessarily gives rise to "grave and doubtful constitutional questions" (213 U. S., supra), and perhaps to "a succession of constitutional doubts," as was suggested in the *Harriman case* (211 U. S., 422).

That the argument thus summarized is not without force may be conceded. The objection to its acceptance does not arise from any doubt concerning the rule of interpretation invoked, for that rule is well settled, but rather from the lack of any substantial basis for its application. It is only when a statute is ambiguous or obscure, or wanting in definiteness, so that its real intent and meaning are uncertain because the language permits differing interpretations, that the rule in question may be applied. If the legislation is clearly expressed and of unmistakable import, so that there is no room for reasonable doubt as to what the lawmaking body intended to accomplish, the courts are not at liberty to frustrate or modify the legislative intention, but must accept and deal with the statute in accordance with the manifest purpose which it expresses.

To our apprehension the meaning of this amendment is not open to serious question. It is a clear and comprehensive declaration, in no respect indefinite or incomplete. The concluding phrase is not a limitation or restriction, but on the contrary was plainly inserted for the purpose of fixing the legal

status of the persons and corporations included in precise terms in the preceding description, to the end that they should be regarded and treated as common carriers subject to the act by all officials who are or may be charged with the administration and enforcement of the regulating statute. In our judgment the amendment permits of no other or different construction, and we must therefore accept it as a plain and unambiguous measure, designed to effect a complete and definite purpose.

In support of this view we need cite only the first "Employers' Liability cases" (207 U. S., 463, 500). It seems evident to us that the statute then under consideration was not clearer or plainer than is the amendment in question, nor were its terms any more comprehensive and unqualified. To uphold the constitutionality of that enactment the Government stoutly contended that it should not be construed as applying to all the employees of any common carrier engaged in interstate commerce, although all were included in the language defining its scope, but should be held to embrace only such employees as were, or when they were, themselves engaged in interstate commerce; and this view is reflected in the dissenting opinion of Mr. Justice Moody. But a majority of the court, speaking through Mr. Justice (now Chief Justice) White, rejected the argument in an opinion from which the following is quoted:

"So far as the face of the statute is concerned, the argument is this: That because the statute

says carriers engaged in commerce between the States, etc., therefore the act should be interpreted as being exclusively applicable to the interstate commerce business and none other of such carriers, and that the words "any employee," as found in the statute, should be held to mean any employee when such employee is engaged only in interstate commerce; but this would require us to write into the statute words of limitation and restriction not found in it. * * * To write into the act the qualifying words, therefore, would be but adding to its provisions in order to save it in one aspect, and thereby to destroy it in another; * * *

"The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional; but this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose."

So far as the debates in Congress when this amendment was pending may be resorted to for any purpose, they tend strongly to confirm the conclusion above expressed. We are convinced from an examination of what was then said, particularly in the Senate, that Congress undertook and intended by this amendment to make common carriers of and to subject to the provisions of the act as such the owners of private pipe lines who were not common carriers and who used their respective pipe lines, and had always used them, solely for the transportation of their own oil, in carrying on their private business; and it is equally clear that Congress enacted the amendment with full knowledge that the question of its consti-

tutionality was involved. In short, we agree with the Commission in what is said in the following excerpts from its report in the pipe-line proceeding:

"This seems to be the plain meaning of the act, that all pipe lines carrying oil from one State to another State, no matter what their previous status, should be thenceforward considered and deemed to be common carriers. And, to uphold this construction, reference may be made to the history of this provision.

* * * * *

"Throughout the discussion there is abundant evidence that Congress passed this act for the purpose of subjecting all interstate pipe lines carrying oil to Federal regulation, and took this action consciously, in the presence of the very constitutional question now raised as to its power."

Rejecting, therefore, the first proposition above stated, and holding that the amendment in question applies to the petitioners in these cases, in common with other pipe-line companies of like character and business, we come to consider the second proposition. Does this amendment, construed in accordance with the Government's contention, which we uphold, exceed the constitutional power of Congress? Would its enforcement invade or take away rights secured to the petitioners by the fifth amendment?

Of the plenary power of Congress to regulate interstate commerce nothing need be said beyond giving it full and complete recognition. That this power may be exercised to the utmost extent, and acknowledges no limitations other than those prescribed in

the Constitution itself, is established beyond question by a notable line of cases from *Gibbons* v. *Ogden*, decided in 1824, to the latest utterance of the Supreme Court upon the subject. But it is equally well established by numerous decisions that the limitations prescribed are positive and controlling. The same authority that grants the power fixes also the limits within which the exertion of that power must be confined. If, therefore, Congress passes a law which disregards those limits, as by depriving the owners of property of rights which the Constitution protects against invasion, the legislation can not be upheld, and it becomes the duty of the courts to stay its enforcement.

As was said by Mr. Justice Brewer in *Monongahela Navigation Company* v. *United States* (148 U. S., 336):

"But like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument, and among them is that of the fifth amendment * * *. Congress has supreme control over the regulation of commerce, but if, in exercising that supreme control, it deems it necessary to take private property, then it must proceed subject to the limitations imposed by this fifth amendment, and can take only on payment of just compensation."

And in *Adair* v. *United States* (208 U. S., 180) the Supreme Court, speaking by Mr. Justice Harlan, used the following language:

"We need scarcely repeat what this court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, can

not be exerted in violation of any fundamental right secured by other provisions of the Constitution. (*Gibbons* v. *Ogden*, 9 Wheat., 1, 196; *Lottery Case*, 188 U. S., 321, 353.)"

In attempting to apply these basic principles to the question now presented, we are led to observe at the outset the real significance of this amendment as disclosed by the intention with which it was enacted and the purpose which it seeks to accomplish. It does not undertake to regulate the business in which these private pipe-line companies are and always have been engaged. Indeed, it assumes that the legal status of such companies, under the laws of the States of their creation and tested by the nature of their activities, was that of persons pursuing a private occupation; and it attempts by a legislative declaration to make that private occupation a public calling and to impose upon those who pursue it the duties and obligations of common carriers. Before the law was enacted their business was private; by force of the law itself that business is made public. Nothing which they were then doing is subjected to regulation, but they are in effect commanded to do something else which would be of public concern; and by simply declaring them to be common carriers they are made to devote their property to public use against their will and under the regulations prescribed by the act. Thus the owner of a private pipe line which was built upon private rights of way, and which has been used solely for the transportation of his own oil, is required to open and extend its use to

whomsoever may desire its enjoyment, no matter with what resulting inconvenience and injury to himself.

And this is concededly the intent and purpose of the amendment. It is not designed to regulate some public use to which private property has been voluntarily devoted, but it attempts by an act of legislation to transmute the agencies of private business into instrumentalities of public service. In aim and necessary effect it compels these private pipeline companies to relinquish the exclusive use for which their pipe lines were provided, and in which they have always been employed, and to place them at the disposal, for a compensation which public authority would have the right to determine, of all such persons as might tender oil for transportation. When the principle involved in this amendment is apprehended, when its far-reaching scope and power are perceived, does not the reflecting mind almost instinctively reject it as unsound and unjust? Is it not at variance with any reasonable conception of the rights and immunities of private property and the conditions under which it may be taken for public use? How can the conclusion be avoided that it operates and must operate to deprive the petitioners of their property without due process of law and to take that property without just compensation?

Upon principle and authority it is not to be doubted, and counsel for the Government do not contend otherwise, that to effect an invasion of the rights protected by the fifth amendment it is not

necessary that the actual physical possession of property should be taken. It is sufficient if the owner be deprived of its exclusive use and enjoyment. This proposition is broadly stated by the Court of Appeals of New York in *Forster* v. *Scott* (136 N. Y., 577), in the following language:

"What the legislature can not do directly it can not do indirectly, as the Constitution guards as effectually against insidious approaches as an open and direct attack. Whenever a law deprives the owner of the beneficial use and free enjoyment of his property, or imposes restraints upon such use and enjoyment that materially affect its value without legal process or compensation, it deprives him of his property within the meaning of the Constitution. All that is beneficial in property arises from its use and the fruits of that use, and whatever deprives a person of them deprives him of all that is desirable or valuable in the title and possession. It is not necessary, in order to render a statute obnoxious to the restraints of the Constitution, that it must in terms or in effect authorize an actual physical taking of the property or the thing itself, so long as it affects its free use and enjoyment, or the power of disposition at the will of the owner."

And in *Weems Steamboat Co.* v. *People's Co.* (214 U. S., 345, 355) the Supreme Court gives the principle concrete application, as follows:

"A private wharf on a navigable stream is thus held to be property which can not be destroyed or its value impaired, and it is property the exclusive use of which the owner can only be deprived in accordance with established law, and if necessary that it or any part

of it be taken for the public use due compensation must be made. The owner of a private wharf on a navigable stream does not, on that account only, hold it by a different title from the owner of any other property which he may use himself or permit others whom he may select to use, while at the same time denying its use by anyone else."

And this suggests the clear distinction between the question here presented and the questions decided in a number of well-known cases, all of kindred character, such as *Munn* v. *Illinois* (94 U. S., 113), *Budd* v. *New York* (143 U. S., 517), *Brass* v. *North Dakota* (153 U. S., 391), and *Cotting* v. *Kansas City Stock Yards* (183 U. S., 79). Nor did the earliest of these, Munn v. Illinois, establish any new principle of law but only gave effect to an old one, as the Supreme Court said in *Dow* v. *Biedelman* (125 U. S., 680). Indeed, it had long been held by the courts of England as well as the United States that when one devotes his property to a use in which the public has an interest he in effect grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but as long as he maintains the use he must submit to the control.

But this legislation is not of that character. None of these petitioners has at any time transported oil for others or used its pipe lines for any other purpose than the transportation of its own oil which it had produced or purchased prior to the transportation.

Nor has anything been done by them which can be claimed to effect a devotion of their property to a public use or to give the public an interest in its use, since they have always refused to carry oil for the public or to permit the use of their lines except for the transportation of their own property. The effect of the amendment is to change the nature and quality of their business from private to public, by requiring them to share with others the facilities which they have provided for themselves alone and to employ those facilities in the service of the public. In our judgment, this is something essentially different from and quite beyond the power delegated to Congress to *regulate* commerce among the States; and we are persuaded that a law which in intention and result deprives the owners of private property of its exclusive enjoyment and compels the devotion of that property to public use, in the manner attempted by this amendment, involves an exercise of legislative power in plain contravention of the fifth amendment. No Federal statute of like aim and import has been brought to our attention and no authority has been cited which sustains the validity of such legislation.

Among the cases referred to in argument, aside from those before mentioned, is *Cargill* v. *Minnesota* (180 U. S., 452), which is of the same class as *Brass* v. *North Dakota*, *supra*, and others involving various aspects of the same general question. Without reciting the facts of that case or quoting at length from the opinion, it is sufficient to say that the Supreme

Court upheld a Minnesota statute which in effect required the Cargill Company to take out a license for carrying on the business *in which it had voluntarily engaged.* It is true this company had never received into its warehouse any grain except its own, but the State court held that the warehouse in question could be fairly regarded as "a sort of public market place, where the farmers come with their grain for the purpose of selling the same, and where the purchaser, a party in interest, acts as market master, weighmaster, inspector, and grader of the grain"; and this was deemed to be of sufficient public concern to justify the State in supervising *the business actually conducted.* The Minnesota law made no attempt to change the character of that business, nor did it seek to compel such concerns as the Cargill Company to store or handle grain for the public or to otherwise act in the capacity of public warehousemen. Had such a requirement been imposed a very different question would have been presented. This is indicated in *Brass* v. *North Dakota, supra,* where the Supreme Court said respecting a law of that State which declared certain classes of buildings in which a warehouse business was conducted to be public warehouses:

"We do not understand this law to require the owner of the warehouse, built and used by him only to store his own grain, to receive and store the grain of others. Such a duty only arises when he chooses to enter upon the business of elevating and storing the grain of other persons for profit."

It is not necessary in these cases to consider the circumstances under which or the extent to which business activities, whether public or private, may be regulated by public authority. That is not the point in dispute. That the business of these petitioners, as it is and has been carried on, may be subjected to regulation need not be in any wise questioned. But it is one thing to exercise public control of a private business which *as such* should be placed under public supervision; it is quite another thing to require that business to be changed from private to public and compel those who are engaged in it to assume the responsibilities of a public calling.

The distinction we are here pointing out, and which seems to us controlling, is indicated in Weems Steamboat Co. *v.* People's Co., *supra*. For that reason, and because of its general bearing upon the controversy in these cases, we quote from the opinion at some length as follows:

"The case of *Munn* v. *Illinois* (94 U. S., 113, 127) has, in our judgment, no bearing upon the question before us. In that case and in those cited therein the discussion was in regard to the right of owners of property of the nature described to charge what they pleased for the doing of the business in which they were engaged. Their property was being used with their consent by and its use devoted to the public to any extent desired, and the only question was in regard to the compensation which they were entitled to ask for the business thus done. The complaint was that the charges were too great and were a violation of a law of the State and were not reasonable,

and the answer made by the owners of the property was that it was their private property, and they had the right to charge what they pleased. The court said, as you have devoted your property to a use in which the public has an interest, you have granted to the public an interest in that use and the right, on the part of the State, to regulate charges which you shall make to the end that they shall be just and reasonable. If the owner of one of these wharves had devoted it to the public use and permitted the public to use it as it desired and demanded compensation for such use, the question as to the amount of such compensation might be raised as in the Munn class of cases, to be determined with reference to the reasonableness of the charge. But this is no such case. The legislature has passed no law regarding rates, if that were material, and the reasonableness of the charge is not under consideration. The right to use the property has been withdrawn by the owner as to the public in general, including defendant. The only question is whether a third person has the right to use a private wharf on tendering reasonable compensation therefor, because there is no other wharf at the place, or because it would be more convenient to such third person to so use it or because the former owner of the wharf had permitted the public to use it, although the present owner refused to consent to such use. There is no more reason why such property should be held subject to the right of others to use it against the will of its owner than there is for any other kind of property to be so held."

Without referring to other authorities in this connection, we proceed to examine the particular grounds upon which the Government relies to sustain the validity of this legislation.

It is argued, in the first place, that the amendment should be construed as in effect prohibiting these petitioners and other private pipe-line owners from transporting their own oil from one State to another by means of pipe lines except upon condition that they transport oil for the public and become common carriers of that commodity. This appears to have been the view of the Commission, as disclosed by the following paragraph in its report:

"So far as we are informed, the Supreme Court of the United States has never been called upon to pass upon a question of this character, and while it may be conceded that Congress could not impose upon a private pipe line the duties and responsibilities of a common carrier, it is not clear but that the provisions of this act could be upheld upon the ground that Congress was establishing a condition to which any pipe-line company must conform which transported oil across a State border."

Putting aside the suggestion that neither the form nor apparent intent of the amendment supports such a construction, since in terms it prohibits nothing and does not purport to establish a condition, and granting for argument's sake that it may and should receive the interpretation here claimed for it, we are led to reject the contention because it involves an erroneous assumption. It assumes that one who engages in the dealings or activities which constitute interstate commerce is not exercising an inherent right that springs from the nature and necessities of social order, but is merely enjoying a privilege which

Congress can take away if it chooses or permit on such conditions as it sees fit to prescribe. But this view, so far as we are aware, has never received judicial sanction. The contrary was held in the first case involving the meaning and scope of the commerce clause which reached the Supreme Court, *Gibbons* v. *Ogden, supra,* when Chief Justice Marshall included the following in his oft-quoted opinion, page 211:

"In pursuing this inquiry at the bar it has been said that the Constitution does not confer the right of intercourse between State and State. That right derives its source from those laws whose authority is acknowledged by civilized man throughout the world. This is true. The Constitution found it an existing right, and gave to Congress the power to regulate it."

Without citing other authorities it is sufficient to quote the forcible statement of the principle by Chief Justice White, at page 502, in the Employers' Liability cases, *supra* (207 U. S., 463):

"It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely State concern. It rests upon the conception that the Constitution destroyed the freedom of commerce

which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which can not be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local; would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

In the light of these decisions nothing further need be said in this connection in answer to the argument here considered.

In the second place it is urged, and this appears to be the ground upon which the Government chiefly relies, that the amendment should be upheld as a valid regulation of interstate commerce to prevent monopoly, or, as it is said, to prevent a tendency to monopolize, and therefore any incidental injury which results must be regarded as immaterial. This position is indicated by the following paragraph in the reply brief of the learned Assistant Attorney General:

"The argument that these pipe lines are not themselves monopolies within the meaning of the Sherman Act is wholly irrelevant. That act applies only to concerns that are already monopolies, or are attempting (*intentionally*) to monopolize. The present act is designed to go *beyond* the Sherman Act. The Sherman Act cuts down the full-grown plant. The pipe-line amendment pulls up the roots from

which it grew. It does not prohibit the private operation of these pipe lines because they *are* monopolies, but because such private ownership has proved itself to be the *source* of monopolies, because it contains an *inevitable tendency* toward monopoly."

This contention also appears to involve the assumption that the amendment prohibits these petitioners, and other companies of like character, from transporting their own oil by means of pipe lines, unless they also transport for others and become common carriers of that article. We have already endeavored to show that the legislation can not be sustained even if this construction be accepted; but since such a construction seems to be suggested in support of the monopoly argument now considered, it may be suitable to add some observations to what has already been said. As heretofore stated, the amendment in terms applies to all persons and corporations engaged in the interstate transportation of oil by means of pipe lines, whether their business be extensive or insignificant, "who shall be considered and held to be common carriers within the meaning and purpose of this act." When this amendment was adopted in 1906 there were quite a large number of persons and corporations owning private pipe lines which they used in carrying on the business in which they were severally engaged, and the amendment operated upon all of them when it went into effect. They were thereby subjected to all the applicable provisions of the act and declared to be common carriers within its meaning and purpose. The ex-

clusive use of their pipe-line properties, which they had theretofore enjoyed, was brought to an end and those properties in effect appropriated for the use and benefit of others and required to be thereafter operated as public facilities in accordance with the provisions of the regulating statute. The properties whose status was thus attempted to be changed had been acquired by the respective companies under the laws of the States of their creation and without violation or evasion of any Federal enactment. Each of these concerns was carrying on a legitimate business, whether producing oil in the crude state of a natural deposit, buying and selling it in that condition, or manufacturing an article better adapted to the needs of consumers by the process of refining; and the transfer of the crude oil by pipes from wells to tanks, from tanks to points where delivery was made to customers, or by refiners from points of production or purchase to their refineries, were in every sense legitimate business operations. Equipped with these valuable aids to their private pursuits, the pipe-line owners all at once find themselves subject to a law which obliges them to become common carriers of oil under stringent regulations. It is idle to say that they can avoid the obligations which this amendment imposes by going out of the pipe-line business. Practically speaking, they have no such election, because the discontinuance of pipe-line transportation involves the virtual destruction and loss of their pipe-line properties. Nor is this alternative contemplated by the enactment. On the contrary, the only

rational view of its intent and purpose assumes that these pipe lines would be kept in operation under the law which devoted them to public use. It is the "necessary or natural" effect of a statute which must be taken into account, as the Supreme Court said in *Minnesota* v. *Barber* (136 U. S., 320); and it is beyond question that the persons and corporations brought within the reach of this amendment were not expected to abandon the pipe lines which they had constructed, but rather and beyond doubt to continue their use as public facilities under public regulation. The amendment was plainly designed to subject to public use these private pipe lines as they were then in operation and because in the nature of the case they must continue to be operated. The alternative of abandonment was not in contemplation, and there is no basis for the assumption here considered.

Can the amendment be sustained as a valid regulation to prevent monopoly or a tendency to monopoly? It is not open to doubt that Congress has power to legislate, within constitutional limits, for the prevention or suppression of monopoly; and the exercise of that power is manifested in the enactment of the potent and far-reaching antitrust law of 1890. It is quite evident, however, and the Government makes no claim to the contrary, that nothing which these petitioners are doing or have done amounts to a violation of the antitrust law, for here there is no combination, no absorption or control of one by another, no concerted action of any sort, not even a common understanding. This being so, it

must result that the amendment in question, upon the theory now considered, is of broader scope and much more drastic character than the enactment of 1890, and that, as above stated, is the Government's contention.

It will be observed that the amendment makes no mention of monopoly and therefore does not purport on its face to be a measure for breaking up an alleged monopoly and preventing its continuance. But disregarding the absence of any declared purpose, and taking into account the circumstances under which the amendment was adopted, we may properly consider its validity upon the assumption that the real though undisclosed purpose was to destroy that degree of control of the oil business which is claimed to result from the private ownership of pipe lines and which is asserted to be monopolistic. The province of the courts in such an inquiry is defined in Minnesota *v.* Barber, *supra* (136 U. S. 320), as follows:

"Upon the authority of those cases, and others that could be cited, it is our duty to inquire, in respect to the statute before us, not only whether there is a real or substantial relation between its avowed objects and the means devised for attaining those objects, but whether by its necessary or natural operation it impairs or destroys rights secured by the Constitution of the United States."

And in *C. B. & Q. Ry.* v. *Drainage Commrs.* (200 U. S., 593) it was said:

"If the means employed have no real, substantial relation to public objects which government may

legally accomplish, if they are arbitrary and unreasonable beyond the necessities of the case, the judiciary will disregard mere forms and interfere for the protection of rights injuriously affected by such illegal action. The authority of the courts to interfere in such cases is beyond all doubt."

We are therefore to determine whether there is any real and substantial relation between the assumed purpose of the amendment, which is the prevention of monopoly, and the means adopted to accomplish that result, namely, depriving petitioners of the exclusive use of their private pipe lines and requiring such lines to be operated for the benefit of the public; and whether the means so employed are arbitrary, unreasonable, and beyond the necessities of the case.

It is quite impossible for us to perceive any such relation unless the operation of a private pipe line tends necessarily by its nature and the function it performs to produce a monopoly. The Government asserts that this is the case and bases its argument upon that proposition; but neither in brief nor oral argument is there any statement of the grounds or reasons upon which the assertion is predicated. Explanation is wanting of how it happens, or why it follows, or from what facts it is deduced, that the private operation of a pipe line in the private business of its owner produces, or has any tendency to produce, the conditions and results which the law denounces as a monopoly. Much is said about the debates in the Senate when the amendment was pending, and reference is made to the report of the Commissioner of

Corporations submitted shortly before, which gives a full account of the investigation that Congress had previously ordered. But we find nothing either in the debates or the report which has any appreciable bearing upon the question now considered. The discussions in the Senate and in the report of the commissioner deal with the conditions of unified ownership or control by the Standard Oil Company of a great portion of the pipe lines of the country, including the common carrier pipe lines, and the resulting advantage and power of that company, which were alleged to constitute an unlawful monopoly. But this comes quite short of disclosing how or why a private pipe line used solely in its owner's private business becomes of necessity, or can become while so employed, a facility which he may be forbidden to use, or the use of which he may be compelled to give to the public, because it is claimed to be a monopoly or to have a monopolistic tendency.

We are therefore unable to see that the Standard Oil case has any application to the present controversy. That case involved the monopolization or tendency to monopoly which was alleged to result from the combined control by the Standard Oil Company of New Jersey, through its dominant ownership of the stocks of numerous companies, of the greater part of all the pipe lines of importance throughout the country, both public and private, together with numerous refineries and facilities for marketing which were potentially competitive. (*Standard Oil Company* v. *United States*, 221 U. S.,

pp. 70–77.) The Supreme Court held that this vast combination and the methods of dealing which its power enabled it to enforce constituted a monopoly forbidden by law. But that is far from saying that private pipe lines separately owned by dealers in oil or refiners, and used by them in the private business in which each is separately engaged, are or can be a monopolistic possession. In short, there is no process of reasoning which sustains the contention that the ownership and operation of private pipe lines, such as are here involved, tends in the nature of things to or results in monopoly.

We have searched the decisions in vain for any definition of monopoly, any statement of its elements or description of its characteristics, which would include or apply to the activities of these petitioners and similar pipe-line owners. In the absence of some contract or combination between competitors, some mutual agreement or understanding which has in view or actually results in restricting competitive freedom, all of which are here wanting, it would seem that monopoly by a single individual must consist of or be effected by some acts or series of acts or continued course of dealing which operates to deprive others of privileges or opportunities which rightfully belong to them and which they would otherwise enjoy. But how does the possession of a private pipe line by one of many oil producers or dealers take from the others any privilege or opportunity which is rightfully theirs or which they are justly entitled to share with the more fortunate owner?

Of what right can they be said to be deprived, or in what respect are they subjected to any injury or disability which is illegal?

True, the possession of a pipe line enables its owner to transport his oil to the refinery or other market at very small cost compared with any other means of conveyance. The practical result may be, and in most instances doubtless would be, that other producers find it to their interest to sell the output of their wells to the owner of the pipe line, and in this sense it may be said that they are obliged to sell to him. Granted that his pipe line gives him such command that he is able to control or even fix the selling price of the crude article in that particular field or territory, upon what sustainable theory can it be claimed that other producers are deprived of anything which rightfully belongs to them because they do not or can not provide themselves with the same means of reaching the market? And upon what conception of constitutional rights can it be contended that Congress has the power to transform this private pipe line into a public facility and require its owner to become a common carrier? If this can be done, if a mere act of legislation can change the legal status of his property from private to public and compel him against his will to devote that property to public use, with all the burdens and obligations which he must thereby assume, is not the fifth amendment as to him shorn of its vitality and its protective power reduced to a shadow?

In the nature of things one who owns private property of substantial value has an advantage over those not fortunate enough to have similar possessions, and this advantage ranges through all degrees. It frequently results in commercial dominance of precisely the same sort and quite as complete as the alleged monopoly here considered. But the advantage so acquired, whatever its degree, is not monopolistic, nor are we able to see that it has any tendency, much less an inevitable tendency, to bring about the conditions which constitute an unlawful monopoly, except upon the socialistic theory that all private ownership is indefensible and that everything should be held in common. The simplest conception of private property implies possession which is exclusive and enjoyment from which others may be debarred; it can not otherwise be *private*. The advantage which comes from its legitimate use is a necessary incident of private ownership, and it is a misuse of terms to say that this advantage tends to monopoly. Although the private use of private property excludes others from the benefits and opportunities which the owner enjoys, and which might accrue to others if they shared in that use, yet this is not monopolization, whatever its indirect consequences, because those who are excluded have no rightful claim to that which belongs to the owner himself. It is only repeating to say that the private use by petitioners of the pipe lines in question has no relation to monopoly, and in no correct sense of the word tends to monopoly, since such use does not exclude others from any privilege

which is rightfully theirs and involves only that exclusion which is inseparable from the possession and enjoyment of private property. It may be that the greater number of oil producers are virtually compelled to sell their output to the owners of private pipe lines, because they are unable or unwilling to build pipe lines of their own, or because there are no common carrier pipe lines to which they have access, but we are quite unable to see how the situation in which such producers are placed gives them the right, or what constitutional power Congress can exert to endow them with the right, to use the private lines of petitioners and other private companies, or how the denial of such use is a monopolistic exclusion or indicates a tendency to monopoly which deprives these private owners of the protection guaranteed by the fifth amendment. In our judgment there is no basis for the contention that the pipe-line amendment has any real or substantial relation to the monopoly alleged to result from the nature and methods of pipe-line transportation.

This conclusion in effect disposes of the kindred contention that any injury to private pipe-line owners resulting from the amendment is not a taking of their property but is merely incidental to the legitimate exertion of governmental power. The paragraph already quoted from *Minnesota* v. *Barber* (136 U. S. 320) declares it to be the duty of the court, in considering legislation of this character, to inquire "whether by its necessary or natural operation it

impairs or destroys rights secured by the Constitution of the United States."

Keeping in mind the unmistakable intent and meaning of this amendment, it seems to us quite obvious that its "necessary or natural operation" must impair and measurably destroy rights of ownership and use which the Constitution protects from invasion, and accomplish inevitably a taking of property within the meaning and intent of the fifth amendment. As already pointed out, the amendment does not in terms or contemplation prohibit the continued use of these private pipe lines by their respective owners, nor does it attempt to regulate in any way their use and operation *as private lines.* It does neither of these things. It goes much further and aims at something essentially different, since it undertakes to deprive the owners of private pipe lines of the exclusive use of their property, devotes that property to the service of the public, and compels them to become common carriers against their will. Does not this of necessity amount to a taking of private property for public use, and how can it be reasonably claimed that the resulting injury is only incidental? We have examined all the cases cited by counsel and many others which deal with the police powers of the States and the exercise of analogous powers by Congress, but none of them reaches the question here presented or gives support to the Government's contention. It seems to us too plain for argument that these private pipe lines can not be legislated into public facilities, and

that the amendment necessarily deprives the owners of such lines of their property rights without just compensation.

"The constitutional requirement of due process of law, which embraces compensation for private property taken for public use, applies in every case of the exertion of governmental power. If in the execution of any power, no matter what it is, the Government, Federal or State, finds it necessary to take private property for public use, it must obey the constitutional injunction to make or secure just compensation to the owner." (*C., B. & Q. Ry.* v. *Drainage Commissioners, supra*, 200 U. S., 593.)

So much was said in argument about the Commodities case that we refer to it briefly for the purpose of pointing out the fundamental difference, as we conceive, between the question there decided and the question involved in the cases at bar. In that case the Supreme Court was dealing with a law prohibiting railroad companies, which are common carriers in a complete and peculiar sense, from transporting their own property, with certain exceptions. It is unquestionably a valid regulation of interstate commerce to require the public carriers of that commerce to charge like rates for like service and to make no unjust discrimination between persons or places. To give full effect to such a fundamental principle of regulation, Congress has ample power to prevent anything which impairs its full operation. It may therefore prohibit any use of an interstate railroad which is inconsistent with or antagonistic to the equal public use which such a railroad is

bound to afford, or which is liable to defeat in any respect or degree the public purpose for which it is chartered. But it is an altogether different proposition to say that Congress, under the guise of regulating interstate commerce, may by a legislative decree convert these private pipe lines into public utilities and force their unwilling owners to take upon themselves the obligations of common carriers. We find nothing in the Commodities case which is at all at variance with the views herein expressed or which tends to support the validity of this amendment.

It is hardly necessary to observe that the legislation under review involves no question of public morals, or health, or safety, and therefore it seems plain that the doctrine of the Lottery case and similar decisions has no application to the present controversy.

It remains to consider briefly some minor contentions which appear to be more or less relied upon by the Government and which perhaps should not be left unnoticed. One of these contentions is based upon facts which are common to all private pipe-line companies, the others arise out of facts which are peculiar to one or more of these petitioners.

1. The pipe lines of each company are in numerous instances laid across, and sometimes along, public streets and highways, usually below the surface, under permission of the local authorities. From this circumstance or condition it is suggested that the petitioners bring their pipe lines within the regulat-

ing power of Congress, as they might not if there were no use or occupancy of lands dedicated to the public for highway purposes. Upon this point we concur in the opinion expressed by the Commission in its report, as follows:

"* * * It appears that the usual policy of the lines is to deal with the owner of the abutting property in acquiring such highway rights upon the theory that such abutting owners own also the fee in the highway, and that the public right therein is a mere easement of passage. That this is the general rule of law there can be no doubt, and the few exceptions occur in States where the question here at issue is unlikely to arise.

"We are of the opinion that a pipe line is not impressed with the obligations of a common carrier merely because, by arrangement with the abutting owner, it uses a public highway for right-of-way purposes."

Accepting this as a correct statement of the law, it follows that Congress has no power to compel a private pipe-line owner to become a common carrier of oil merely because his pipe line crosses or is laid along public highways.

2. We also agree with the Commission that the validity of this amendment is not sustained by the fact that the pipe lines of some of the petitioners, for shorter or longer distances, are laid upon the rights of way of certain interstate railroads under contract arrangements between the pipe-line owners and such railroads. Whatever may be the right of a railway company to permit such use of its property or the

authority of Congress to prohibit it, we are clearly of opinion that the power to compel these petitioners to become common carriers of oil, if that power be otherwise wanting, is not brought into existence as to them by the circumstance that portions of their lines are constructed and operated on railroad rights of way. Whether or not a given pipe-line company is a common carrier depends upon the business in which it engages and for which its pipe lines were provided, and not upon the character of the route upon which those lines are located.

3. As above stated, the Prairie Oil and Gas Company was organized in 1900 under the laws of the State of Kansas. Subsequently, in 1905, the legislature of that State passed a law containing this provision:

"All pipe lines laid, built, or maintained for the conveyance of crude oil within the State of Kansas are hereby declared to be common carriers, and said conveyance of said oil shall be in the manner and under the restrictions in this act provided."

We are of the opinion, without reviewing the argument, that this law was passed in disregard of the constitution of the State of Kansas and is therefore invalid; and it appears not to have been enforced in that State. Moreover, it seems sufficient to say, as the Commission in substance says, that Federal power in such a case is not derived from a State enactment, and that if Congress is without power to compel private pipe-line companies to become common carriers of oil in interstate commerce, a State statute

is not less ineffectual. In this connection it is rather interesting to observe that the Uncle Sam Oil Company claims to be prohibited by the laws of the State of its creation from engaging in the business or acting in the capacity of a common carrier.

4. It appears that portions of the lines of the Prairie Oil and Gas Company and of the Uncle Sam Oil Company were laid through Indian lands under a permit granted by the Secretary of the Interior. Among the rules and regulations for granting rights of way to pipe-line companies prescribed by the Sectary of the Interior on December 2, 1906, was the following:

"And no application for the construction of a pipe line will be approved unless the applicant agrees that such pipe line shall be held to be a common carrier and agrees to all the provisions hereof."

We are satisfied from the record that the permit to the Prairie Oil and Gas Company was granted prior to the date mentioned and under regulations which did not contain the quoted condition. This being so, there is no basis for contending that this company assumed any public obligation by reason of the fact that it was permitted to lay its lines across the lands in question. Moreover, we incline to the opinion, from examination of the law under which the Secretary acted, that he had no authority to impose such a condition (*United States* v. *McMurray*, 181 Fed. 723); and this perhaps accounts for the circumstance that the condition was eliminated in 1909, as we understand the matter, and has not since been required.

It is also to be noted with reference to this contentionthat no part of the lines of these companies, including those laid across Indian lands, has ever been used as a common-carrier line or for any other purpose than to transport the property of its owner.

5. The remaining contention relates to the pipe lines of the Standard Oil Company of New Jersey and is based upon facts which, so far as deemed material, may be summarized as follows: The line from Unionville across the State of New Jersey to the Bayonne refinery was built upon private rights of way and put into operation in 1882 by the National Transit Company, which, under the terms of its charter, is a common carrier in the State of Pennsylvania. About May 1, 1894, this line was transferred to the New York Transit Company, which was incorporated under a law of the State of New York, by virtue of which it became a common carrier within that State. The line from Centerbridge to the Bayway and Bayonne refineries was built upon private rights of way and put into operation in 1897 by the National Transit Company. The line from Fawn Grove to the Baltimore refinery was likewise built upon private rights of way and put into operation about 1885 by the National Transit Company.

The New York Transit Company was never reincorporated in the State of New Jersey nor was the National Transit Company ever reincorporated in the State of New Jersey or the State of Maryland. In neither of these States is there any law providing for the organization of common-carrier pipe-line com-

panies, and neither of the corporations mentioned has ever possessed or attempted to exercise the right of eminent domain in New Jersey or Maryland. Nor has either of them, under the laws of those States or by virtue of any agreement connected with its acquisition of rights of way or otherwise, ever assumed the obligations of a common carrier or at any time acted in that capacity in the States in which the lines in question are located.

Subsequently these three lines were sold and transferred to the Standard Oil Company of New Jersey, one of the petitioners herein. The preliminary steps appear to have been taken in November, 1905, and the sale consummated by delivery of deeds of conveyance in July, 1906. Shortly afterwards the purchaser took over the entire operation of the lines, and has since used them exclusively for transporting its own oil to the refineries mentioned; and we assume for present purposes that this transfer was made in anticipation of the passage of this amendment or some similar law, and to avoid any undesired consequences which might follow from such legislation if the lines remained in the possession of their former owners.

Nevertheless we are unable to see that the facts here referred to place the owner of these particular lines on any different footing from other private pipe-line companies as respects the validity of the pipe-line amendment. The former owners were never under obligation by their charters or otherwise to perform the duties of a common carrier in New

Jersey or Maryland; they never had held themselves out as common carriers in those States; nor had either of them in fact carried oil therein except for a single customer. The fact that the transit companies were organized as common carriers in New York and Pennsylvania did not make them common carriers in New Jersey or Maryland, nor, in our opinion, would it prevent them, even if they had been carrying for the public, from discontinuing such service in the latter States and becoming therein purely private pipe-line companies. (*Weems Steamboat Co.* v. *People's Co., supra.*) We think it also clear that they had the right to sell these New Jersey and Maryland lines to the Standard Oil Company, that the purchaser had a right to acquire and use them exclusively in its private business, and that no public obligation was thereby assumed or public duty imposed (*Oman* v. *Bedford-Bowling Green Stone Co.*, 134 Fed., 64); and it is equally clear that neither the right of the transit companies to sell nor the right of petitioner to buy was affected by the assumed motive for the transaction. Without amplifying the argument we have no hesitation in holding that if the amendment in question is invalid as to the other private pipe-line companies, for the reasons above stated, it is equally invalid as to this petitioner and the particular lines here considered.

This discussion might be prolonged almost indefinitely, for the underlying question is full of suggestions, but enough has been said to indicate the general reasons upon which we base our conclusion.

We are impressed with the serious and unwelcome responsibility of invalidating in any respect an act of Congress, because it manifests an exertion of power in excess of constitutional limitations. But we can not escape the conviction that this pipe-line amendment, which we must construe according to its undoubted meaning, is an act of legislation which plainly invades the rights secured to these petitioners by the fifth amendment, and we can not, therefore, do otherwise than stay the enforcement against them of the Commission's order. Without reference to other considerations which might justify preliminary injunctions in these cases, we have purposely placed our decision upon grounds which in effect determine the controversy, and we have done so to avoid occasion for protracted trials and to aid an early review by the court of last resort.

A preliminary injunction will be granted as prayed for in each of the above-entitled cases, and it is so ordered.

MACK, Judge, dissenting:

I concur with the majority of the court in their construction of the statute.

Because of the conclusions reached on the constitutional question, it is unnecessary for me to differentiate the several petitioners or to express any opinion on the so-called minor contentions.

On the fundamental question of the constitutionality of this legislation, under which, in effect, interstate transportation of oil by pipe lines is prohibited

unless the transporter will act as a common carrier subject to the provisions of the interstate commerce act, I am compelled to dissent.

It is conceded in the majority opinion that an act of Congress is constitutional if its object is within the realm of Federal authority and if the means employed for its accomplishment have a real and substantial relation thereto and are not arbitrary, unreasonable, and beyond the necessities of the case.

A doubt, however, is not to be resolved against but in favor of the validity of legislation; courts should not declare a statute unconstitutional until they are satisfied thereof beyond a reasonable doubt. Whether consistently carried out in practice or not, this has ever been a fundamental rule in our jurisprudence. (*Ogden* v. *Saunders*, 12 Wheat., 213.) While its application alone would compel me to dissent in this case, I do not rest my conclusions upon the existence of a reasonable doubt. In my judgment, the act is within the power of Congress to regulate interstate commerce.

This power may be exerted for many purposes: directly, to remove restraints thereon or obstructions thereto; indirectly, to conserve the public health or morals or to promote the general welfare. The means to be adopted for the accomplishment of a legitimate purpose rest in the sound discretion of Congress subject only to the limitation hereinbefore stated.

As the Supreme Court in its most recent decision bearing on this question says (*Hoke* v. *U. S.*, Feb. 24,

1913): "Congress may adopt not only means necessary but convenient to its exercise and the means may have the quality of police regulations."

What, then, is the object of this act? Its aim is neither completely to take from the owner or absolutely to prohibit his use of pipe lines theretofore within his exclusive control; it does, however, condition that use in interstate commerce upon his permitting a like use by the general public on payment of reasonable compensation therefor; the alternative is to cease to operate them or to dispose of them.

Clearly, therefore, the general purpose is to regulate interstate commerce in oil; the immediate specific object is to remove a serious obstruction to the free play of competitive forces in the industry, to prevent a monopolization of a part of such commerce. It is immaterial that this purpose is not proclaimed in the act itself; the history of the legislation and the debates, particularly in the Senate, leave no room for doubt as to the evils which Congress and the public generally believed to exist.

In 1905 the House of Representatives had directed an investigation of the oil industry by the Bureau of Corporations. In 1906 a first report (59th Congr., 1st sess., H. R. Doc. 812) was made, primarily on the operations of the Standard Oil Company. (This was followed in 1907 by two more elaborate reports as well as by a report of the Interstate Commerce Commission, 59th Congr., 2d sess., H. R. Doc. 606.) The relation of pipe lines and pipe line transportation

to the development of the industry was fully detailed; it was therein demonstrated not merely that the unification of many of these lines under the Standard Oil Co. was the keystone of its practical monopoly in the refined products, but also that the possession of the only pipe line in any field necessarily gave the owner thereof control in the distribution of oil there produced. He was for all practical purposes the sole available customer for the greater part of crude oil and could thus ordinarily fix the price to be paid therefor. This was due to the utter practical impossibility of competition between one dependent upon railroad transportation and one who could transport his crude product through pipe lines. The important customer of the crude-oil producer is the refiner. But as refineries are generally and more advantageously located in the great markets and near the seaports and not in the oil fields, most of the crude oil must be transported. Physically, this could be done in barrels or tank cars by railroad; economically, railroads can not compete with pipe lines because the actual cost of railroad transportation is three or four times that of pipe line transportation.

A pipe line, however, is not a transportation facility readily available to the producer as is a horse and wagon, or to-day even an automobile, to the average farmer. In the developed stage of the oil industry it is, in its very nature, analogous to the instrumentalities used by common carriers and other public-service corporations. Ordinarily these lines are hundreds of miles in length. Like railroads, there are

trunk and branch lines; to construct them requires large capital; to duplicate them between an oil field and its natural market would usually involve economic waste similar to that caused by paralleling railroad lines.

An individual or corporation controlling the pipe line transportation in any field would thus have the same opportunity of monopolizing the distribution of the crude oil from that field as the owner of the only railroad in any section would have to monopolize the distribution of most articles produced or manufactured along the line. His ownership gives him the practical power of monopolizing the purchase of the goods and of fixing the price thereof and thereby of monopolizing interstate commerce therein, at least, in certain territories. In the one case as in the other governmental regulation is essential to check this evil.

The actual situation in 1906 as reported to Congress was that most pipe lines, both common carrier and private, were under the domination of the Standard Oil Co. The Commissioner of Corporations had said that it had "all but a monopoly of the pipe lines in the U. S." and that "its control of them was one of the chief sources of its power." (59th Congr., 1st sess., H. R. Doc. 812, pp. 36 and 37.)

In *Purity Extract & Tonic Co.* v. *Lynch*, 226 U. S., 192, the Supreme Court says, "The existence of power is not to be denied simply because some innocent articles or transactions may be found within the proscribed class. The inquiry must be whether,

considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat." And so it may well be that even if the primary purpose of the act were to prevent the use of the pipe lines as an essential element in and for the purpose of building up the Standard Oil Co.'s monopoly in the refined products, the power of Congress is not be denied merely because some other lines are brought within the terms of the act.

To determine then whether the means adopted to secure these legitimate ends are reasonable or not, we must consider what remedies were available by which the channels and instrumentalities of interstate commerce could be kept open so that all producers on payment of a reasonable compensation might be enabled to compete freely in their natural markets.

Government ownership either through condemnation by eminent domain or through the construction of new lines would be possible, but at this time and until every other available measure of relief shall have proved ineffective, such a radical departure from the previous policy of regulation entailing, in the judgment of many, evils far greater than those attempted to be cured can not be deemed so feasible an alternative as to necessitate its adoption.

Subjection of *common carrier* pipe lines to the stricter supervision and regulation prescribed by the interstate commerce act would afford only partial relief; many, if not most, of the important lines were not operated by common carriers.

Disintegration of the Standard Oil Co. under the Sherman Act would probably result in freer competition, but it would not give the necessary relief to independent producers who would still have to sell to the private pipe-line owner or stimulate effectively the construction of independent refineries which, under a régime of private pipe lines, would have difficulty in securing the crude product.

The only feasible remedy was the one adopted by Congress, to make the existing facilities available to the public generally by prohibiting their use except on this condition. That thereby the exclusiveness of private ownership was invaded does not render the act unconstitutional. The case of *Weems Steamboat Co.* v. *Peoples Co.*, 214 U. S., 344, held only that at *common law and without statutory grant* no one could compel another to permit the use of his property for just and reasonable compensation merely because the property, a private wharf, was a desirable or even an essential facility of commerce. The court, however, expressed no opinion on the validity of legislation compelling such permission.

Congress, like the State legislatures, can authorize the actual destruction of private property if such destruction be reasonably essential to the accomplishment of a legitimate legislative purpose. (*Hipolite Egg Co.* v. *U. S.*, 220 U. S., 45.)

It may and it has absolutely prohibited certain forms of interstate commerce. (*Hoke et al.* v. *U. S.*, *supra;* The Lottery Cases, 188 U. S., 321.)

Under the Sherman Act, disintegration of vast combinations of capital has been decreed irrespective of the depreciation therein produced in the value of property. (*U. S.* v. *Standard Oil Co.*, 221 U. S., 1.)

Under the commodities clause common carriers are prohibited from transporting certain of their own property and are thus compelled to part with the ownership before transportation regardless of the loss suffered thereby. (*U. S.* v. *D. & H. Co.*, 213 U. S., 366.)

By the Carmack amendment the burden of responding in damages to a shipper for losses occasioned by the acts of independent but connecting carriers is imposed upon the initial carrier "as a condition of continuing in that traffic." (*A. C. L.* v. *Riverside Mills*, 219 U. S., 186.)

And in cases not involving common carriers, prohibition acts adopted under a State power no more extensive than that granted to Congress by the commerce clause as limited by the fifth amendment, have been held constitutional despite the practical destruction thereby of most of the value of brewery and distilling plants. (*Mugler* v. *Kansas*, 123 U. S., 625.) And if a State, in the regulation of private business, such as banking, in order to promote the public welfare, may "go from regulation to prohibition except upon such conditions as it may prescribe" (*Noble State Bank* v. *Haskell*, 219 U. S., 104, see *Engle* v. *O'Malley*, 219 U. S., 128), is the Federal Government to be denied the use of like means?

The power to regulate can not, of course, be used either directly or by the imposition of conditions precedent to the exercise of the right to engage in interstate commerce, as a subterfuge to extend the jurisdiction of the Federal Government to those matters over which the States have exclusive control. (Employers' Liability Cases, 207 U. S., 463.) The amendment in question, however, makes no such attempt. The condition thereby imposed is not in any sense a regulation of domestic commerce: it is directly and essentially a regulation of interstate commerce alone.

The remedy prescribed by this amendment is far less drastic than that adopted to abate other restraints on interstate commerce; that it is feasible is demonstrated by the fact that many pipe lines are operated by common carriers and that in at least two States, Kansas and West Virginia, all pipe line carriers are declared by statute to be common carriers. Therefore, in my judgment, it can not be deemed an unreasonable or arbitrary exercise of legislative power.

But if, as is contended, the act can not be sustained as a legitimate regulation of commerce, if it amounts to a taking of private property for public use, does it afford the owner the just compensation to which he is constitutionally entitled?

To deprive one of the entire or partial use of property is a taking thereof; a distinction, however, may well be made in the method of compensation dependent upon whether the owner is deprived of his title

of the possession, or only of the exclusive use. *Otis Co.* v. *Ludlow Co.*, 201 U. S., 140, and *Clark* v. *Nash*, 198 U. S., 361, are cases in which only the exclusiveness of the owner's use of his property was invaded; his title and possession were undisturbed. In the former, only a right of action in tort was given to the upper riparian land owner for the damages that would be caused from time to time by overflowing his land pursuant to a statutory right granted to the builder of a dam. In the latter, while payment for the easement of bringing water through a neighbor's private irrigation ditch was required under a statute granting individual owners of arid land the right so to use the private property of others, no security was provided for the share of maintenance expense to be paid from time to time. Each of the statutes was held to be constitutional.

In the present case, just and reasonable compensation for the use to be made from time to time of these pipe lines is secured, and it may well be doubted whether any other or additional compensation can constitutionally be demanded merely because of the change in the status of the pipe line owner to that of a common carrier and the consequent subjection of the line itself and of the owner to the regulatory supervision of the Interstate Commerce Commission.

○

182 In the United States Commerce Court.

October Session, 1912.

THE OHIO OIL COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE Commerce Commission and Cornplanter Refining Company, intervening respondents. } No. 78.

Order granting preliminary injunction. Entered March 14, 1913.

This cause came on to be heard at this session and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

First, that a preliminary injunction be and the same is hereby issued, as prayed for in the petition, against the order of the Interstate Commerce Commission entered June 3rd, 1912, the effective date of the same having been extended to March 15th, 1913, notifying and requiring the petitioner to file with the Interstate Commerce Commission schedules of its rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce, a copy of which order is attached to the petition and made a part thereof; and that the said order and its force and effect be and the same is hereby suspended, restrained, and enjoined until the further order of the court.

Second, that a duly certified copy of this order be forthwith served by the marshal of this court upon the Attorney General of the United States and the chairman of the Interstate Commerce Commission.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

183 *District of Columbia, ss:*

I hereby certify that on the 14th day of March, 1913, I served the within order granting preliminary injunction on the chairman of the Interstate Commerce Commission by leaving a certified copy thereof with Alfred Holmead, assistant secretary.

March 14, 1913.

F. J. STAREK,
Marshal.

District of Columbia, ss:

I hereby certify that on the 14th day of March, 1913, I served the within order granting preliminary injunction on the Attorney General by leaving a certified copy thereof with Blackburn Esterline.

March 14, 1913.

F. J. STAREK,
Marshal.

184 In the United States Commerce Court.

October Session, 1912.

THE OHIO OIL COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT; Interstate Commerce Commission and Cornplanter Refining Company, interveners. } No. 78.

Petition for appeal. Filed March 14, 1913.

The United States of America, respondent; Interstate Commerce Commission and Cornplanter Refining Company, a corporation, intervening respondents, feeling themselves aggrieved by the interlocutory order or decree of the Commerce Court, entered March 14, 1913, granting a preliminary injunction suspending and enjoining the order of the Interstate Commerce Commission until the further order of the court, by their respective counsel, pray an appeal to the Supreme Court of the United States, in accordance with section 2 of an act entitled "An act to create a Commerce Court," etc., approved June 18, 1910.

The particulars wherein the United States and the said interveners consider said order or decree erroneous are set forth in the assignment of errors on file, to which reference is made.

And the United States and the said interveners further pray that a transcript of the record, proceedings, and papers on which the said order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

J. C. MCREYNOLDS,
Attorney General of the United States.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

Allowed:

C. D. CHAMBERLIN,
Solicitor for Cornplanter Refining Company.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court in said cause.

185 In the United States Commerce Court.

October Session, 1912.

THE OHIO OIL COMPANY, PETITIONER,
v.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE Commerce Commission and Cornplanter Refining Company, intervening respondents. } No. 78.

Assignment of errors. Filed March 14, 1913.

Come now the United States of America, respondent, Interstate Commerce Commission and Cornplanter Refining Company, a cor-

poration, intervening respondents, by their respective counsel, and in connection with their application for appeal, file the following assignment of errors, on which they will rely upon said appeal to the Supreme Court of the United States from the interlocutory order or decree of the Commerce Court entered March 14, 1913, in the above-entitled cause.

The Commerce Court erred:

I.

In holding and adjudging that the amendment of June 29, 1906, to the act of Congress entitled "An Act to Regulate Commerce," etc., approved February 4, 1887, which provides that "The provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, and partly by pipe lines and partly by water, * * * who shall be considered and held to be common carriers within the meaning and purpose of this act * * *" is unconstitutional and void as in violation of the fifth amendment to the Constitution of the United States.

186

II.

In construing the said amendment of June 29, 1906, relating to pipe lines, as a declaration by Congress that all private pipe-line companies doing business in interstate commerce shall become and be common carriers subject to the act to regulate commerce and in not construing the said amendment as a declaration by Congress that the transportation of crude oil in interstate commerce by means of pipe lines should thereafter be carried on only by common carriers subject to the act to regulate commerce.

III.

In holding and adjudging that the receiving and storing stations and the market places established by petitioner in the fields of production of crude oil, and the inspecting, grading, measuring, purchasing, and receiving the oil thereat by petitioner did not constitute such public receiving and storing stations, public markets for the purchase and sale of crude oil, and a part of the transportation thereof in interstate commerce subject to regulation by Congress.

IV.

In holding and adjudging that the construction and operation of pipe lines upon and over the public streets and highways and upon and over the rights of way of common carriers by railroad subject to the act to regulate commerce and transporting interstate traffic through said pipe lines did not subject such pipe-line companies to the regulating power of Congress.

V.

In not holding and adjudging that the ownership and operation of pipe lines by the petitioner and the manner and form in which the same are used in the purchase, transportation in interstate commerce, and sale of crude oil constitutes monopoly and monopolistic tendencies, and that Congress has the power to destroy monopoly
187 and to prevent monopolistic tendencies by declaring that the interstate transportation of crude oil shall be carried on by common carriers subject to the act to regulate commerce.

VI.

In holding and adjudging that the ownership and operation of the pipe lines in question in the manner and form in which the same are used do not tend in the nature of things to, or result in, monopoly or monopolistic tendencies, and that the Standard Oil case (221 U. S., 1), to which the petitioner was a party, has no application to the present controversy, even though, as found in that case, the petitioner was a party to and a part of an illegal combination in restraint of trade and commerce, and as such its business methods were adopted and its pipe lines were acquired and operated for the purpose of monopolizing crude oil and controlling the output and price thereof and obstructing the free flow and movement thereof in the channels of interstate commerce.

VII.

In not holding and adjudging that the petitioner, when it was a part of an illegal combination in restraint of interstate trade and commerce in 1906, adopted its manner of doing business for the purpose of obstructing the free flow and movement of crude oil in the channels of interstate commerce, and of thwarting and evading regulation under the act to regulate commerce, while at the same time carrying on the business of a common carrier of crude oil by means of pipe lines and controlling the output, purchase, sale, and transportation thereof in interstate commerce, and confessedly to avoid any undesired consequences which might follow if the pipe lines in question had continued their then operations.

188 VIII.

In granting the motion for a preliminary injunction and in suspending and restraining the order of the Interstate Commerce Commission entered June 3, 1912, referred to in the petition, and in not denying the said motion.

Wherefore the United States and the said interveners pray that the said interlocutory order or decree of the Commerce Court, entered March 14, 1913, be reversed, annulled, and set aside, and that the

petition be dismissed, and for such other and further order as may be appropriate.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
C. D. CHAMBERLIN,
Solicitor for Conoplanter Refining Company.

189 In the United States Commerce Court.

October Session, 1912.

THE OHIO OIL COMPANY, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT; Interstate Commerce Commission and Conoplanter Refining Company, interveners. | No. 78.

Order allowing appeal. Entered March 14, 1913.

In the above-entitled cause, the United States of America; Interstate Commerce Commission and Conoplanter Refining Company having made and filed their petition praying an appeal to the Supreme Court of the United States from the interlocutory order or decree of the Commerce Court, entered March 14, 1913, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided—

It is ordered and decreed that the said appeal be and the same is hereby allowed as prayed and made returnable on the 13th day of April, A. D. 1913; and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, papers, and proceedings to the Supreme Court of the United States.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court in said cause.

190 United States Commerce Court.

THE OHIO OIL COMPANY, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT; Interstate Commerce Commission and Conoplanter Refining Company, interveners. | No. 78.

United States of America, ss.:

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 189, inclusive) to be a true and complete transcript of the proceedings had and papers filed in the above-entitled cause, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 15th day of March, A. D. 1913.

[SEAL.]

G. F. SNYDER,
Clerk.

191 STATE OF NEW YORK,
County of New York, Southern District of New York, ss:

CARL BRECHER, being duly sworn, deposes and says: I am a messenger in the office of the United States Attorney for the Southern District of New York. On the 18th day of March, 1913, I served a copy of the annexed citation on appeal upon Chester O. Swain personally, at his office, No. 26 Broadway, in the Borough of Manhattan, city, county, and State of New York, by delivering a copy thereof to him and leaving the same with him.

CARL BRECHER.

FREDERICK L. CAMPBELL,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

192 *Citation on Appeal.*

UNITED STATES OF AMERICA, ss.

To The Ohio Oil Company, a corporation:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States of America, Interstate Commerce Commission, and Cornplanter Refining Company, a corporation, are appellants, and you are appellee, to show cause, if any there be, why the interlocutory order or decree rendered against the said appellants as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this fourteenth day of March, in the year of our Lord nineteen hundred and thirteen.

MARTIN A. KNAPP,

Presiding Judge of the United States Commerce Court.

Service of a true copy of the within citation is hereby admitted this 17th day of March, A. D. 1913.

[SEAL.]

CARTER, LEDYARD & MILBURN,
Solicitors for Appellee, The Ohio Oil Company, a Corporation.
FRANK L. CRAWFORD,
Of Counsel.

193 (Indorsed:) File No. 23,587. Supreme Court U. S. October term, 1912. Term No. 1012. The United States et al., appellants, vs. The Ohio Oil Company. Citation and proof of service of same. Filed March 21, 1913.

194 In the Supreme Court of the United States.

October Term, 1913.

THE UNITED STATES OF AMERICA ET AL., APPELLANTS,
v.
THE OHIO OIL COMPANY, APPELLEE. } No. 1012.

Stipulation.

It is hereby stipulated and agreed by and between the parties, by their respective solicitors, that the following documents contained in the record need not be printed, viz: "Opinion of the Commerce Court, announced and filed March 11, 1913"; "Report of the Interstate Commerce Commission in the proceeding entitled 'In the Matter of Pipe Lines, No. 4199,'" and that the appellants will forthwith file with the clerk thirty printed copies of each document for the use of the court and the counsel, who may refer to the same upon the hearing to all intents and purposes as though printed in the record.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
C. D. CHAMBERLIN (E.)
Solicitor for Cornplanter Refining Company.
JOHN G. MILBURN,
CARTER, LEDYARD & MILBURN,
Solicitors for the Ohio Oil Company, Appellee.

195 (Indorsed:) File No. 23587. Supreme Court U. S. October Term, 1912. Term No. 1012. The United States et al., appellants, vs. The Ohio Oil Company. Stipulation to omit part of record in printing. Filed April 16, 1913.

196 In the Supreme Court of the United States.

October Term, 1912.

UNITED STATES OF AMERICA ET AL., APPELLANTS,
v.
THE OHIO OIL COMPANY, APPELLEE. } No. 1012.

Stipulation.

It is hereby stipulated and agreed, by and between the parties, by their respective solicitors, that the attached copies of tariffs and the

attached copy of the order for completion of the record may be attached to and taken and considered as a part of the record in the Supreme Court on the hearing of the appeal in the above-entitled cause.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
———— ————,
Solicitor for Cornplanter Refining Company.
JOHN G. MILBURN,
Solicitor for The Ohio Oil Company, Appellee.

197 In the United States Supreme Court.

THE OHIO OIL COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA ET AL., RESPONDENTS. } No. 78.

Order for completion of the record. Entered March 29, 1913.

It appearing that copies, duly certified by the Interstate Commerce Commission, of the following tariffs of common carrier pipeline companies, namely, (1) The Texas Company Pipe-Line Tariff No. 5, I. C. C. No. 5, (2) National Transit Company Joint Tariff, I. C. C. No. 12, and (3) memorandum of the division of the rates named in said I. C. C. No. 12, were offered by counsel for the United States at the hearing on the motion for preliminary injunction in the above-entitled cause and were received and considered by this court, but by oversight were not filed with the clerk.

It is ordered, this 29th day of March, 1913, that said certified copies of said tariffs be filed and made a part of the record in the above-entitled cause, nunc pro tunc, as of October 31, 1912.

MARTIN A. KNAPP,
Presiding Judge.

A true copy.
Test:
[SEAL.] G. F. SNYDER,
Clerk of the United States Commerce Court.

198 INTERSTATE COMMERCE COMMISSION,
Washington.

(Filed March 29, 1913, nunc pro tunc as of October 31, 1912.)

I, John H. Marble, secretary of the Interstate Commerce Commission, do hereby certify that the documents hereto attached, and more particularly hereinafter described, are true copies of schedules lawfully filed with the said Interstate Commerce Commission on dates specified below, to wit:

The Texas Company Pipe Line Tariff No. 5, I. C. C. No. 5, filed on May 21, 1908.

National Transit Company Joint Tariff I. C. C. No. 12, filed on September 25, 1908.

Memorandum of the Division of Rate named in said I. C. C. No. 12, filed on May 28, 1912.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 25th day of October, A. D. 1912.

[SEAL.] JOHN H. MARBLE,

Secretary of the Interstate Commerce Commission.

199 THE TEXAS COMPANY.

(Pipe line tariff.)

The rates named by this tariff are for the interstate transportation of crude petroleum by The Texas Company's Oklahoma-Texas trunk pipe line and are subject to the regulations made part hereof and set forth on page 2, and are expressed in cents per barrels of 42 United States gallons.

From the point in the Glenn Pool (Oklahoma), now established for reception of crude petroleum into The Texas Company's trunk line.

To any one of the Texas points named below at the rate indicated in each instance, to wit:

To West Dallas (Texas) station on said trunk line, at twenty (20) cents per barrel.

To Eleanor (Texas) station on said trunk line, at twenty (20) cents per barrel.

To Corsicana (Texas) station on said trunk line, at twenty-five (25) cents per barrel.

To Beaumont (Texas) station on said trunk line, at thirty-five (35) cents per barrel.

To Port Arthur (Texas) station on said trunk line, at thirty-seven and one-half (37½) cents per barrel.

NOTE.—All deliveries at destination to customer's vessels, or to customer's tanks connected with The Texas Company's lines will be subject to a further charge of 2½ cents per barrel.

NOTE.—Upon demand for such appearing the company is prepared to consider proper promulgation of tariffs for intermediate points not covered by this or other tariffs in force.

"Issued under special permission of the Interstate Commerce Commission, No. 5522, of date May 18, 1908."

Issued May 19, 1908. Effective June 1, 1908.

Subject to change under terms of law.

J. S. CULLINAN,

President of The Texas Company, Houston, Texas.

200 THE TEXAS COMPANY.

(Regulations.)

The Texas Company will undertake interstate transportation of crude petroleum only by its trunk pipe line, receiving and delivering such through its own facilities, and not otherwise, subject to further provisions as follows:

1. Separate pipeage contracts for shipments, in accord with this tariff, and these regulations covering other proper details, must be executed by the parties a reasonable time before the duty of transportation arises.

2. Crude petroleum will be received subject to the right and to the consequences of mixing such with and delivering such from common stock only, the minimum gravity at time of its reception for transportation to be 30 degrees Beaumé; the usual and proper methods of measurements to apply.

3. Storage incident to and during transportation only is available and can be afforded, and the shipper must provide facilities for receiving the oil at destination.

4. The right to require prepayment or acceptable security for charges is reserved, also satisfactory assurance that the crude petroleum is free from liens and charges, and that the shipper has the right to direct its disposition.

5. No limitations are prescribed at this time as to quantities, but reasonable limits will be required by the terms of pipeage contracts, and in the event of tenders in excess of capacities including outstanding pipeage obligations, the right to reasonably allot and apportion is reserved by The Texas Company, and tender for transportation shall not be good for quantities in excess of such as is already in, or available for immediate delivery into, The Texas Company's pipe lines at the time of such tender.

6. Patrons may use, without additional charge, the company's private telegraph lines for messages incident to the business; The Texas Company, however, not to be liable for delivery of messages away from its offices, nor for delay in transmission, nor for interruption of service.

7. All crude petroleum transported under this tariff is subject to further charges for gathering preliminary to receiving the same into the main trunk line, according to the then existing schedule of such charges which are subject to change and which at present are as follows:

Where the distance is 15 miles or more, 20 cents per barrel.

Where the distance is less than 15 miles but more than 10 miles, 15 cents per barrel.

Where the distance is less than 10 miles, 12½ cents per barrel.

Air line distance to apply in accord with The Texas Company's field maps. If other delivery is desired, special arrangements must

be made, covering additional charge proportionate to the service rendered, in no case to be less than 2½ cents per barrel.

8. In case of fire destroying any oil in the custody of The Texas Company's pipe-line department after oil has been received for transportation, and before the same shall have been delivered to the consignee, the shipper shall stand a loss proportionately, as the amount held for such shipper bears to all the oil, including its own, in the custody of The Texas Company's pipe-line department at the time of such fire, and shall be entitled to have delivered only such proportion of such shipment as is left after deducting the proper proportion of the loss, as above; but, in such event, shall be required to pay carriage charges only on the quantity of oil delivered—statements of quantities ascertained and computed from the records in the usual manner by The Texas Company shall be accepted as prima facie correct in the adjustment of a loss under this clause.

201 JOINT TARIFF.

(Two copies to be posted at the receiving station, as required by law.)

Received Interstate Commerce Commission. 125490. Sept. 25, 1908. Division of rates and transportation.

National Transit Company in connection with South West Pennsylvania Pipe Lines, F X 3, No. 1; The Eureka Pipe Line Company, F X 3, No. 1; and Southern Pipe Line Company, F X 3, No. 1.

The rates named in this tariff are for the transportation of crude petroleum oil by pipe lines, subject to the regulations named within.

From Nedsky, Pa. (via Morgantown, W. Va.), to Fawn Grove, Pa. Rates per bbl. of 42 gallons, 32 cts.

In addition to said rate, all oil tendered for shipment to Fawn Grove, Pa., at points in Pennsylvania other than Nedsky, Pa., will be subject to a further charge of 20c. per barrel of 42 gallons each, for gathering and transporting the same to Nedsky.

The rates named in this tariff are subject to change at any time upon the National Transit Co. giving the thirty (30) days' notice required by law.

Issued September 23d, 1908. Effective October 28th, 1908.

GEORGE CHESEBRO,
Secretary National Transit Co., New York, N. Y.

202 REGULATIONS.

This company will receive crude petroleum for interstate transportation only to established delivery stations on its own lines and lines of connecting pipe-line companies on the following conditions:

First. It will receive crude petroleum for interstate transportation when the shipper has provided the necessary facilities for receiving said petroleum as it arrives at destination.

Second. Orders for the shipment of any specified kind of such crude petroleum shall only become effective when orders from the shipper, in connection with orders from other shippers, for the same kind and quality of petroleum shall amount in the aggregate to seventy-five thousand (75,000) barrels or more, consigned to the same point of delivery; and, subject to this requirement, orders for shipment shall become operative in the order in which they shall have been received.

Third. It will forward such crude petroleum when there has been tendered to it by the shipper, individually or by him and others, a quantity of the same kind and quality of crude petroleum amounting in the aggregate to not less than seventy-five thousand (75,000) barrels, all of which shall be consigned for delivery to the same delivery point.

Fourth. All such crude petroleum will be accepted for transportation only on condition that it shall be subject to such changes in quality while in transit as may result from the mixture of said petroleum with other petroleum in the pipe lines or tanks of this or the connecting company or companies.

Fifth. Crude petroleum will only be accepted for transportation when free from all liens and charges.

Sixth. This company is not engaged in the transportation of refined oil, and will not, therefore, accept the same for transportation.

Seventh. Any patron of this company wishing to send telegrams pertaining to the oil business will be allowed to do so free of charge. This does not include any delivery of telegrams at destination except at the company's office.

203 Memorandum of the division of rate named in Joint Tariff I. C. C. No. 12, issued by the National Transit Company in connection with South West Pennsylvania pipe lines, The Eureka Pipe Line Company and Southern Pipe Line Company, for the transportation of crude petroleum oil from Nedskey, Pa., to Fawn Grove, Pa., effective June 1, 1912. This memorandum is made in accordance with Conference Ruling No. 209.

Received Interstate Commerce Commission. 34856. May 28, 1912. Division of tariffs.

The rate given was from Nedskey, Pa., to Fawn Grove, Pa., at 32 cents per barrel of 42 gallons. The division of this rate rests on verbal agreement, and is as follows:

	Per barrel of 42 gallons.
The Eureka Pipe Line Company	3.83¢.
South West Pennsylvania pipe lines	5.07
Southern Pipe Line Company	19.34
National Transit Company	3.76
Total	32.00¢.

S. R. BALL,
Secretary National Transit Company.

OIL CITY, PA., *May 27, 1912.*

204 (Indorsed:) File No. 23587. Supreme Court U. S. October term, 1912. Term No. 1012. The United States et al., appellants, *vs.* The Ohio Oil Company. Stipulation and addition to record. Filed April 19, 1913.

(Indorsement on cover:) File No. 23587. U. S. Commerce Court. Term No. 1012. The United States of America, Interstate Commerce Commission, and Cornplanter Refining Company, appellants, *vs.* The Ohio Oil Company. Filed March 15th, 1913. File No. 23587.

○